

# **MEETING OF THE PARLIAMENT**

Wednesday 19 September 2007

Session 3

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## CONTENTS

Wednesday 19 September 2007

### Debates

Col.

<b>TIME FOR REFLECTION</b> .....	1829
<b>POINT OF ORDER</b> .....	1831
<b>NHS WAITING TIMES</b> .....	1832
<i>Statement—[Nicola Sturgeon].</i>	
The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon) .....	1832
<b>EUROPEAN TREATY</b> .....	1852
The Minister for Europe, External Affairs and Culture (Linda Fabiani).....	1852
Malcolm Chisholm (Edinburgh North and Leith) (Lab) .....	1855
Ted Brocklebank (Mid Scotland and Fife) (Con) .....	1858
Robert Brown (Glasgow) (LD) .....	1860
Irene Oldfather (Cunninghame South) (Lab).....	1861
Keith Brown (Ochil) (SNP).....	1863
George Foulkes (Lothians) (Lab).....	1865
Gavin Brown (Lothians) (Con) .....	1866
Gil Paterson (West of Scotland) (SNP) .....	1868
Helen Eadie (Dunfermline East) (Lab) .....	1869
Jim Hume (South of Scotland) (LD).....	1870
Christina McKelvie (Central Scotland) (SNP).....	1872
Margo MacDonald (Lothians) (Ind).....	1874
Christopher Harvie (Mid Scotland and Fife) (SNP) .....	1875
Liam McArthur (Orkney) (LD) .....	1877
David McLetchie (Edinburgh Pentlands) (Con) .....	1878
Malcolm Chisholm .....	1880
The Minister for Parliamentary Business (Bruce Crawford) .....	1881
<b>BUSINESS MOTION</b> .....	1884
<i>Motion moved—[Bruce Crawford]—and agreed to.</i>	
Robert Brown (Glasgow) (LD) .....	1885
The Minister for Parliamentary Business (Bruce Crawford) .....	1886
<b>DECISION TIME</b> .....	1890
<b>BEAULY DENNY PUBLIC INQUIRY</b> .....	1891
<i>Motion debated—[Murdo Fraser].</i>	
Murdo Fraser (Mid Scotland and Fife) (Con).....	1891
Roseanna Cunningham (Perth) (SNP).....	1893
David Stewart (Highlands and Islands) (Lab).....	1895
Elizabeth Smith (Mid Scotland and Fife) (Con) .....	1896
John Farquhar Munro (Ross, Skye and Inverness West) (LD) .....	1897
Patrick Harvie (Glasgow) (Green) .....	1899
Keith Brown (Ochil) (SNP).....	1900
Dr Richard Simpson (Mid Scotland and Fife) (Lab).....	1902
Mary Scanlon (Highlands and Islands) (Con).....	1904
The Minister for Enterprise, Energy and Tourism (Jim Mather) .....	1905

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## Scottish Parliament

*Wednesday 19 September 2007*

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

### Time for Reflection

**The Presiding Officer (Alex Fergusson):** Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Father Andrew Clark, the Roman Catholic chaplain of HM Prison Perth and HM Prison Glenochil.

**Father Andrew Clark (Chaplain of HM Prison Perth and HM Prison Glenochil):** Presiding Officer and members of the Scottish Parliament, thank you for affording me the opportunity to speak to you this afternoon—it is indeed a great honour. I must confess, however, to being somewhat challenged after having read the guidance notes informing me that my address should reflect the practice of the faith community to which I belong. I hope you will not misunderstand when I say that, as a prison chaplain, I normally get to speak to disreputable and troublesome characters from all sorts of shady backgrounds—so I am happy to be here today.

I have learned many things over the years while ministering in prisons, but perhaps the most important is God's ability to take desperate situations, to somehow turn them around, and out of them to bring good. That should not surprise us, though; after all, that is exactly what he did when he turned the tragedy of Jesus's crucifixion on Good Friday into the joy of his resurrection on Easter day: when he took death and gave back new life; when he changed despair into hope; when out of darkness he brought light.

God's activity in the lives of prisoners may not always be spectacular or dramatic. Invariably, it does not mean a road-to-Damascus conversion. Rather, it is better described as being analogous to seeds of God's charity, planted by men and women of good will, that grow slowly under the influence of the Holy Spirit, gradually changing the lives of those who open their hearts to God into the image and likeness of Christ our Lord.

But let us not delude ourselves. While it is my privilege to serve these men, it is also often difficult to see some prisoners as angels with dirty faces, and life inside Scotland's prisons can be hard and dangerous. Nevertheless, God does take hold of individuals and reshape their lives. A serving 24-year-old prisoner gave me this poem a few months ago. Having put his trust in God and

experienced his love, he was able to pen the following words:

"Oh my God, your love is so true,  
I rejoice in my sentence for it brought me to you.  
Always beside me and never apart,  
Forgiving my madness and hardness of heart.  
With your life changing peace you granted to me  
A hunger for your grace that alone sets me free.  
And though surrounded by these walls and wire,  
To remain in your love is all I desire."

There is a lesson in that for us all. No matter what our personal or private circumstances; no matter what difficult situations lie before us; no matter how troubled we may sometimes feel ourselves to be in the face of local, national or even global problems, if we have faith and approach God our Father with hope and love, he will work again in us—through the power of the Holy Spirit—the miracle of Jesus's death and resurrection, both here in this Parliament and its business of government, and in the minutiae of our day-to-day living.

## Point of Order

14:34

**Margaret Curran (Glasgow Baillieston) (Lab):** On a point of order, Presiding Officer. I ask you to consider the following. In the previous session, Fergus Ewing quoted the guidance on ministerial statements, which says that

“where the subject matter is of sufficient significance for a Ministerial statement to have been programmed into the business of the Parliament, the details of that statement should not be released to the media before the statement is made.”

We are seeing a pattern of behaviour on the part of the Scottish National Party Government. Will you consider that? If it is in breach of the guidelines, I ask, as Fergus Ewing did, that the minister

“express regret and give us an assurance that such a breach will not recur in this session.”—[*Official Report*, 11 September 2003; c 1665.]

Presiding Officer, if the minister does not do that this afternoon, will you give the matter some consideration and report back to the chamber at an appropriate time?

**The Presiding Officer (Alex Fergusson):** I thank the member for the point of order. I have not found any reason to believe that any guidance or guidelines have been broken in relation to today's statement. In general, I hope that members are aware—I have made this known in the past to the Minister for Parliamentary Business and others—that I take the subject very seriously. I monitor it on a regular basis, and I will continue to do so.

**Margaret Curran:** Further to that point of order, Presiding Officer. In the light of rulings that we have received from previous Presiding Officers, will you clarify how your current statement fits with the quotation from the guidance that I have just read out?

**The Presiding Officer:** As I said before, I am satisfied that there has not been a breach with regard to this afternoon's statement.

## NHS Waiting Times

**The Presiding Officer (Alex Fergusson):** We move to the statement by the Cabinet Secretary for Health and Wellbeing on national health service waiting times. The cabinet secretary will take questions at the end of her statement, and there should therefore be no interventions.

14:36

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I am pleased to have this opportunity to bring members up to date with important changes in how patients' waiting times will be measured in the NHS in Scotland. The changes will enable the abolition of hidden waiting lists of people who are waiting for routine outpatient appointments and hospital treatment.

To some of us, so-called availability status codes have always been synonymous with hidden waiting lists, and have been difficult to understand, impossible to explain and deeply unfair to patients. Their abolition will bring real benefit to many patients, but I want to ensure that the changes are explained clearly and that their implications are understood widely, which is why I arranged to make a statement today and why I will make information on the new system available to general practitioners, hospitals and patients.

In the statement, I will summarise how waiting has been defined and measured in the NHS up to now. I will then describe in some detail the new approach to measuring waiting times that will apply from 1 January next year and the steps that we are taking to ensure that patients are aware of the changes and what the implications for them will be. Finally, I will outline what we will do to ensure that the new system is fully transparent and open to scrutiny. In short, I will make it clear how the new Scottish National Party Government will, in our first year, do what the previous Government failed to do in eight years: we will ensure that hidden waiting lists in our NHS are a thing of the past.

First, let me explain the current approach to measuring waiting for routine NHS appointments and treatment. It goes back, I am told, about 15 years to the days of the patient charter. Under that system, many patients were given guarantee exception codes, which meant that they were placed outside the waiting time guarantee and put on a deferred waiting list. By 2001, there were almost 26,000 patients on the deferred list. In 2003, the then Minister for Health and Community Care abolished guarantee exception codes and the deferred waiting list, and replaced them with availability status codes. That was no more than a

cosmetic change—the circumstances under which health boards apply availability status codes to patients are remarkably similar to those that previously led to a patient's being given a guarantee exception code or being placed on the deferred list. Furthermore, patients who are given availability status codes are, just as before, stripped of their waiting time guarantee.

Once a code is applied, there is no requirement on the NHS ever to take it off again: patients are outside the scope of the guarantee. As a result, patients with availability status codes continue to wait long periods—in many cases, several years—for the treatments that they need. That is simply because a hospital decides that their treatment is a low clinical priority, because at some stage they have been unable to attend an appointment—often through no fault of their own—or because at some point in the past they have not been fit enough for treatment.

Not only is that system deeply unfair to patients, it is designed to keep them in the dark. No regular statistics are published on the length of waits that are experienced by people with availability status codes. To make matters even worse, individual patients are often not properly informed, or even informed at all, that a code has been applied to them. That is despite the fact that, as a result of their having a code applied to them, patients might have to wait a very long time indeed for routine treatment. That is simply unacceptable. It fails to treat patients as partners in their own care who have a right to know about their treatment, and it completely undermines confidence in our national health service.

In December 2004, a different health minister conceded that availability status codes do not work in the interests of patients and announced that a new approach to defining and measuring waiting would be introduced. The plan was to introduce new arrangements from the end of 2007. In the meantime, NHS boards were to get ahead and treat as many as possible of their patients who had had a code applied to them in the past. Unfortunately, the intention was not matched by any action and the number of people on the hidden waiting lists continued to rise. By March 2006, about 35,000 patients had an availability status code and, therefore, had absolutely no waiting time guarantee. Despite that, the previous Administration persisted in claiming that all patients were being treated within maximum waiting time targets, even though it—and the public—knew that that was simply not the case. That served only to undermine trust and confidence in the national health service still further. I do not think that anyone will disagree that the current system badly needs to change.

Let me now describe the new system that will replace availability status codes from 1 January 2008. The first change is that all patients who need to see a specialist at an outpatient clinic, or who need hospital treatment, will receive treatment within the maximum waiting time limits. There will no longer be any exclusions because a hospital decides that treatment is a low clinical priority or is too highly specialised.

The second change is that patients who are waiting for treatment and who become unavailable for any reason—medical or social—will no longer lose their waiting time guarantee completely, as is currently the case with availability status codes. Instead, any periods of unavailability will be taken into account when the total waiting time is measured.

The best way of thinking about the new approach is to consider each patient as having a personal waiting time clock. The clock starts when the general practitioner's referral is received by the hospital or when a decision is made to provide treatment. The patient must be seen or treated before the clock shows the maximum waiting time. If a patient is unavailable for treatment, the clock will stop and will be restarted when the period of unavailability ends. For example, if a patient needs admission to hospital for treatment but has a six-week period when they cannot accept an appointment for social reasons—for example, because of work or family commitments—the hospital's obligation will be to treat them within 24 weeks from the start date, rather than 18 weeks. Another example would be the patient who has a temporary medical condition, such as raised blood pressure or a chest infection, that makes it clinically inappropriate for treatment to be undertaken. The patient will therefore be unavailable, but the hospital will keep the patient on the list and under review until the issue has been resolved. The waiting time clock will be stopped until the patient is fit again and available for treatment.

Patients who become unavailable and have their clock stopped will be kept under regular review. Those regular reviews will pick up when a patient has become available for treatment again and make absolutely sure that waiting time clocks are not stopped for any longer than necessary.

Of course, there will be cases in which a medical condition may render a patient unavailable for treatment indefinitely. In those circumstances, a hospital may, in the patient's own interests, remove them from the waiting list and refer them back to the active care of their GP.

The third key change will be a hospital appointments system that is more flexible for patients. In the future, a patient will be offered a choice of at least two appointment dates, with at

least three weeks' notice. Under the current system, if a patient asks to rearrange an appointment that they had previously accepted, they could be given an availability status code, lose their waiting time guarantee and end up waiting two years or more for treatment. That approach does not strike the right balance between the interests of the NHS and those of patients. A patient may need to postpone an appointment for good reasons—indeed, they may need to do so more than once.

It is, however, also clear that the repeated rearrangement of appointments will cause additional work for the NHS and may divert resources or even waste part of a scheduled session that another patient could have used. Therefore, I have decided that a patient will be entitled to postpone and rearrange an appointment or admission not once, but twice, if necessary. In those circumstances, the hospital will reset the waiting time clock to zero from the date of cancellation. It will then offer at least two further appointment dates with at least three weeks' notice. Those dates must be within the maximum waiting time. That approach strikes the right balance between providing patient flexibility and avoiding wasting NHS time as a result of repeated cancelling and rearrangement of appointments.

The new system will ensure—at long last—much greater protection and more flexibility for patients. Of course, the other side of the coin will be an obligation on patients to treat our national health service with respect. Patients who accept appointments and then fail to attend for no good reason and without giving the hospital notice can expect to be removed from the waiting list and referred back to their GPs.

Having described the new approach in detail, I now want to explain the steps that we are taking to ensure that patients know about the changes and how they might be affected by them. General practitioners and hospitals are being supplied with copies of a leaflet for patients that explains the new approach. GPs will be expected to give those leaflets to patients when they refer them to a specialist for investigation or diagnosis. Hospitals will be expected to provide the leaflet to a patient when it is decided that he or she needs to be admitted for hospital treatment. I have arranged for copies of the leaflet, with other relevant material, to be provided to members for their information. The packs have been delivered to members today with a copy of my statement.

Guidance has been drawn up for GPs and their staff on how the new approach will work. More detailed guidance that explains what I have just described has been provided for hospital staff. Posters will be provided for display in GPs' surgeries and hospital outpatient departments. All

of that will help to get the message across that there is a new approach to waiting times and how they are defined and measured. The patient leaflet makes it clear that patients with questions about the new approach can call NHS 24 on the number that is given. NHS 24 staff have been trained to answer a wide range of questions about the new approach and will do their best to satisfy patients' queries. Members' constituents may come to them with questions about the new arrangements, so I hope that the information that is being distributed to members today will help them to answer those questions or to pass constituents on to the best source of help and advice.

It is essential that patients and their representatives have as much general information as possible about the changes, and as much information as possible about how the new system will affect patients as individuals. It is also essential that the new system be completely transparent. We know from experience that simply changing the system of recording waiting times cannot be guaranteed to get rid of hidden waiting lists. Any system that is not fully transparent is potentially open to abuse.

I will now outline the steps that I am taking to ensure that the new system will be subject to full scrutiny. First, hospitals will be obliged to advise patients when their waiting time clock has been stopped and to explain the implications of that. They will also be obliged to explain how the regular reviews work and what will happen once the period of unavailability is over.

In addition, patients will be entitled to ask at any time to see the information that is held about them by their local NHS board and, if necessary, to have that information corrected if, for example, they believe that a period of unavailability has not been recorded accurately. That will help to ensure both that patients are well-informed about their diagnosis and treatment and that all patients can benefit from the maximum waiting times targets that will now be put in place.

Secondly, we are arranging for information on waiting times, including full information on unavailable patients, to be published regularly on the statistics website that is maintained by NHS National Services Scotland. The first quarterly publication following the launch of the new approach, which will cover the quarter from January to March 2008, will appear in May 2008, which is in line with the convention for such publications. The website will show how many patients at the quarter end were recorded as being unavailable, and how many patients who were treated during each quarter had periods of unavailability recorded, the length of those periods and how many patients were removed from the waiting list and returned to the care of their GPs.



The information will be provided according to NHS board area. In time, trend information will build up and it will become clear whether more or fewer patients are unavailable and whether different boards have larger or smaller proportions of unavailable patients than the average. The information will enable the health directorates to keep track of boards' performance and it will enable members—and, indeed, the news media—to track what is happening in terms of patients' experience in different parts of Scotland. That is in sharp contrast to the opaque arrangements surrounding availability status codes.

I have asked that further measures be put in place to ensure that NHS boards operate the new arrangements fairly, consistently and in the interests of patients. NHS National Services Scotland's information services division, which operates a quality assurance function in respect of published NHS information, will allocate resources throughout 2008 to help to ensure that boards apply the new guidance consistently and accurately. It will also undertake cross-checks on samples of patients' details. The aim will be to ensure that details are accurate and that recorded periods of unavailability are supported by evidence. I have also asked for an initial report on any issues relating to the use of the new approach in the first half of 2008 to be with me as soon as possible. I will publish that report.

In addition, I have invited the Auditor General for Scotland to review how the NHS applies the new approach. Clearly, the details and the timing of any such review would be for Audit Scotland to decide, but I believe that there is a strong and overriding public interest in satisfying Parliament—and, indeed, the public at large—that boards apply the new guidance consistently, fairly and in the interests of patients.

I expect boards to do all that they can to ensure that they apply the guidance correctly and continue to meet the 18-week maximum waiting times targets under the new arrangements, but patients themselves will have a key role in ensuring that they and the NHS follow the new arrangements. I remind members that the NHS is under an obligation to treat all patients quickly, within the maximum waiting times targets. In return, patients are under an obligation to accept a reasonable offer of treatment, to attend at the time they have agreed and to alert the hospital as soon as possible if they need to change their plans for any reason. I believe that that is a fair and reasonable balance. I want the NHS to deliver on its side of the bargain; I have no doubt that patients will deliver on theirs.

The new system will no doubt take a little time to bed down and there may well be teething problems. I urge members to alert me to any

problems so that those can be quickly and thoroughly investigated.

I hope that today's statement and the opportunity for questions that now follows will help to promote awareness of the new arrangements and ensure that they operate to the benefit of patients throughout Scotland. Above all, I hope that today's statement will assure Parliament of the Government's determination to ensure that there will no more waiting lists for NHS patients in Scotland.

**The Presiding Officer:** As I intimated earlier, the cabinet secretary will now take questions on the issues that were raised in her statement. I hope to allow around 40 minutes for questions before moving to the next item of business.

**Margaret Curran (Glasgow Baillieston) (Lab):** I thank the minister for providing me with an advance copy of her statement. I welcome my appointment to the health brief and look forward to many consensual discussions with Nicola Sturgeon along the way.

I can understand why the SNP wishes to distract attention from Labour's success in drastically reducing waiting times from 18 months to 18 weeks. However, it is misleading for the SNP to suggest that availability status codes were hidden waiting lists. Nicola Sturgeon should know that figures for the codes were published every quarter; that is a strange definition of "hidden". I note that she intends to publish statistics in the same way. She knows that the figures were driven by patient choice. The vast majority of the people concerned were offered treatment and requested postponement.

We should all push to improve health care, to quicken the patient journey and to make arrangements for patients to understand it as transparently as possible, which is why Andy Kerr moved to end availability status codes. I am pleased to note that Nicola Sturgeon is using exactly the model that he developed and designed.

Nicola Sturgeon's statement contained something that intrigued me, which I hope she can explain. What exactly are "unavailable patients"? What is the difference between an unavailable patient list and an availability list? Can she clarify whether a patient is still on the waiting list and is included in waiting list statistics if he or she is referred back to their GP? Are patients who are made two offers and cannot take those up off the list?

Will the minister clarify whether the stop-the-clock model that she has borrowed from Labour will apply to all patients in Scotland, even those whom she describes as "unavailable patients", and whether all patients will be treated within 18

weeks, from the time of referral by their GP through to treatment? Will she indicate clearly whether she is making that commitment today?

Will the minister also indicate what resources will be required to meet the commitment? I presume that she has modelled costs and assessed the impact of the changes on the delivery of services. Will she explain the key elements of that work? How much will the changes cost, and how will they impact on service delivery?

Finally, what sanctions will the minister apply to NHS staff and boards if they do not treat patients within 18 weeks and do not meet the requirements that she has set?

**Nicola Sturgeon:** If Margaret Curran is right in saying that the abolition of availability status codes was Labour's idea all along, I presume that she knows how much it will cost, because Labour will have worked that out.

I welcome Margaret Curran to her new position. I look forward to consensual debate with her, on the basis that there is a first time for everything.

Margaret Curran said that availability status codes were not hidden waiting lists and that they reflected patient choice. I presume that she will not take my word for it when I say that they were hidden waiting lists, so I will tell her what the British Medical Association said about them. It described availability status codes as an

"administrative loophole to hide patients who could not be treated within waiting times guarantees."

A doctor from Argyll who raised concerns about his patients said that they were

"a definite attempt to fiddle the figures and make it look good on paper"

and that the system harms patients.

**Margaret Curran** *rose—*

**Nicola Sturgeon:** The member cannot intervene while I am answering her question. I know that she is new to her post, but she is not new to Parliament.

**The Presiding Officer:** This is not a debate; it is a question-and-answer session.

**Nicola Sturgeon:** Under the new system there will be no more hidden waiting lists and figures will be published. Margaret Curran said that the detail on availability status codes was published. The number of people who had an availability status code was certainly published, but the length of time for which those people had waited was never published. That point was picked up by Audit Scotland in its report. No wonder that information was never published—25,000 of them were waiting more than six months and many

thousands were waiting more than a year or two years for treatment.

Margaret Curran said that that was all Andy Kerr's idea. Andy Kerr said:

"There is no such thing as hidden waiting lists. It is complete drivel."

It is a bit rich for the party that said that hidden waiting lists did not exist to now claim that it is responsible for getting rid of them.

Margaret Curran asked me a specific question about the difference between unavailable patients and availability status codes. I will explain it to her simply: under the current availability code system, if someone is unavailable for say, a couple of weeks, because they might have another medical condition that means they cannot be treated, they lose their waiting time guarantee forever, they never get it back and they end up waiting—sometimes in excess of two years—for treatment. Under the new system, if someone is unavailable for two weeks because of a medical condition, the clock will simply stop for those two weeks, they will still have their waiting time guarantee and they will still be treated in the time that they would expect.

The previous Government did nothing to get rid of hidden waiting lists. I am glad to say that this Government will deliver.

**Ian McKee (Lothians) (SNP):** I thank the cabinet secretary for her statement and welcome the Government's decision to abolish hidden waiting lists—in the spirit of consensus, shall we call them availability status codes?—and the greater transparency that will ensure.

I am worried, however, by the seemingly blanket decision to cancel arrangements and refer someone back to their GP if they fail to attend an appointment. Although that might be appropriate in many circumstances, it is well recognised that people who live in deprived areas and who have greater than average health needs miss more appointments, often because of a variety of factors that are not faced by more fortunate citizens. Will the cabinet secretary reassure Parliament that ways will be explored to meet the genuine health needs of that vulnerable section of the population?

**Nicola Sturgeon:** As I tried to say in my statement, an important balance must be struck between patient flexibility and the need of the NHS to have stability and not to have an unnecessary number of cancelled appointments. That is why it is right to give patients two opportunities to rearrange appointments, and to make it clear to them that they have an obligation to treat the health service with respect. As I said in my statement, if a patient does not turn up for treatment for no good reason and without notifying the hospital, the health board will have the option

to refer that patient back to their GP so that the GP can assess the reasons why the patient did not turn up for treatment. The boards will have that right and ultimate discretion lies with them. I would expect any health board to take into account individual as well as clinical circumstances when it makes such decisions. The important point about the new arrangements is that they strike the right balance between NHS and patients' interests. That balance was not struck before.

**Dr Richard Simpson (Mid Scotland and Fife)**

**(Lab):** I add to my colleague's remarks about being glad to be in my new position to lock horns with Nicola Sturgeon and Shona Robison.

I am glad that the cabinet secretary has accepted the principles of Labour's proposals. As a doctor looking at the Government's overly complex attempt to micromanage the system from the centre, I believe that the substantial administrative burden that the cabinet secretary outlined today in her detailed proposals will require substantial additional resources and take up a lot of doctors', nurses' and allied professionals' time.

I ask first for clarification: will the list still be managed and dealt with separately from the general waiting list? In other words, will it be called an unavailability status code list instead of an availability status code list?

I will take a slightly different tack with my other question. The new system that Nicola Sturgeon proposes today, complicated as it is, will be further complicated if she persists in her pursuit of legally binding guarantees on top of all the new complexity. Is she aware that under the much-vaunted Norwegian model of legal guarantees, the number of people on waiting lists increased in two years from 210,000 to 260,000 and, more important, that the number of violations of the code and guarantee doubled from 5,000 to 10,000? I suggest that, if the cabinet secretary persists with this complexity and with the introduction of legal guarantees, lawyers will become more and more involved. Does she accept that the SNP's soundbite pledge on legal guarantees should be dropped?

**Nicola Sturgeon:** I welcome Richard Simpson to his position and look forward to robust but consensual debate.

As for Dr Simpson's questions, one list will be published, but patients' periods of unavailability and their length will also be recorded. The key point is that there must be full transparency. Simply changing the system will not get rid of hidden waiting lists; it must be open to full scrutiny and transparency.

On legally binding guarantees, my announcement today is the first step along the road to an NHS that has patients' needs and rights

more firmly at its heart. Later in the year, we will consult on our manifesto commitment to enshrine patients' rights in law. I look forward to hearing all members' views as we take things forward.

I will end my response by quoting Margaret Watt, the president of the Scotland Patients Association, whose views should perhaps be listened to above those of any anyone else in this debate. She said that the proposals are

"what patients have been waiting for for years"

and described the attacks on them by the Labour and Liberal Democrat benches as "a red herring".

**Mary Scanlon (Highlands and Islands) (Con):**

I, too, welcome Margaret Curran to her new health post, as it means that we are likely to have some feisty and interesting debates about health during the next four years. It is also lovely to see Richard Simpson back on health, although I realise that his appointment is not yet official.

On behalf of my party, I welcome the abolition of availability status codes, which will ensure that patients do not fall through a gap in the system and lose out on appropriate and timely treatment. Indeed, as has been pointed out, much of this move has been patient led and is a result of patient choice.

Given that today's announcement will lead to there being more people on the real waiting list, how will the cabinet secretary ensure that patients are treated not according to political targets but on the basis of clinical need? Secondly, will she address other hidden waiting lists such as those for mental health patients, patients who are waiting for fertility treatment and patients who are referred for drug and alcohol detoxification and rehabilitation treatment, none of whom comes under the 18-week guarantee?

**Nicola Sturgeon:** I thank Mary Scanlon for her questions and will—logically—take the first one first. All patients are treated on the basis of clinical need and priority. A maximum waiting time guarantee is simply that: it sets the parameters of the system in which we work. Patients who, because of clinical needs, have to be treated quicker than the maximum waiting time guarantee should, indeed, be treated quicker. That is the very essence of a clinically driven system, and I will always support and defend it.

I very much agree with Mary Scanlon's second point. We must not only look very closely at meeting the current waiting time guarantees and at working towards and delivering by 2011 our new guarantee of an 18-week whole journey waiting time, but find out how we can further drive down waiting times for some of the patient groups that sit outside the guarantees. The issues involved will vary from group to group, but as

Cabinet Secretary for Health and Wellbeing I certainly look forward to working in partnership with others in the chamber to broaden our focus and ensure that all patients in the NHS get a continuously improving service. I hope that other members in the chamber share that same objective.

**Christine Grahame (South of Scotland) (SNP):** I commend the cabinet secretary for the clarity and accountability of the new process. I recommend that she provides, posthaste, explanatory leaflets to the Opposition.

Is the cabinet secretary aware that, in some parts of the country, people who require a double hip replacement operation are categorised as requiring specialist treatment? Under the previous system, a patient could lose their waiting time guarantee because they needed treatment that was allegedly specialist. How will the new system deal with such a situation?

**Nicola Sturgeon:** I thank Christine Grahame for her question. I assure her that explanatory leaflets are being provided to the Opposition, as well as to GPs and patients around Scotland.

Christine Grahame raises an important point on the kind of treatment that, under the availability status code system, was badged as a low clinical priority or as too highly specialised and which therefore was not within the waiting time guarantee. There is a misconception—I have heard it repeated in the past few days—that the kind of treatment that we are discussing is, for example, tattoo removals. Under the current system, some procedures, such as double hip replacement operations, are excluded from waiting time guarantees because they are regarded as being too highly specialised or of low clinical priority. That is the case in some health board areas at least, because the current system is not applied consistently.

The new system will do away with all such exclusions. All patients from here on in will be entitled to be treated within the maximum waiting time guarantee. I think that that will be welcome news to the thousands of patients who have languished for far too long on hidden waiting lists.

**Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I, too, thank the cabinet secretary for the advance copy of her statement.

I want to press the cabinet secretary on an issue that she has inadvertently not addressed so far, which is bureaucracy and cost. The meat of her statement referred to the stopping and starting of clocks; hospitals checking why someone has missed an appointment; and hospitals telling patients when their clocks had been stopped and why. The cabinet secretary must surely accept that the guidelines that she has announced will

place a huge administrative burden on the NHS. How many more administrative staff does she anticipate that the NHS will need to implement the new guarantee? Is the new waiting time guarantee to be legally binding?

**Nicola Sturgeon:** The new system will be delivered from within the NHS boards' existing financial and staffing resources. The health directorates are working closely with health boards to plan the introduction of the new system and we are at an advanced stage. I record my thanks to health boards and health service staff for their co-operation and efforts in ensuring that we will deliver the new system on time at the start of next year. I believe that the new system will deliver significant benefits for patients, many of whom have been badly served by the current system.

On Jamie Stone's second question, as he knows, we have not yet consulted on our manifesto commitment for legally binding waiting time guarantees. That will be done this year, with a view to legislating on the guarantees in the later years of this session of Parliament. Until then, waiting time guarantees are not legally binding. However, I assure Jamie Stone and other members that the waiting time guarantees will be enforced in order that all patients get the benefit of them.

**Claire Baker (Mid Scotland and Fife) (Lab):** I want to press the cabinet secretary on audiology waiting times. Waiting times for audiology services in central and west Fife are reasonable, but the figures show that, as recently as last month, people in north-east Fife were waiting as long as 52 weeks after first visiting their GP before they got a hearing aid fitted. That wait far exceeds the previous Executive's 26-week target; it also far exceeds the target that was pledged in the SNP manifesto of an 18-week waiting time.

The north-east Fife figures were brought down only this week by a short-term waiting times initiative—the second this year—but we do not know what will happen when the short-term funding runs out. We do not know whether there will be a return to long waiting times in six months.

Equally, there is lack of clarity on audiology waiting times between an answer that I received from the Minister for Public Health, which confirmed that audiology is not part of the 18-week guarantee, and the First Minister's interpretation of the situation. Will the cabinet secretary clarify whether, in line with the SNP manifesto pledge, audiology comes under the 18-week waiting time pledge? If it does not, does that represent another broken SNP promise?

**Nicola Sturgeon:** I am more than happy to clarify that point for Claire Baker. First, I agree that audiology waiting times are far too long, which is

perhaps one of the legacies of the party that she represents.

I will provide precise clarity on the issue that Claire Baker raises. The current waiting time targets, which were set by the previous Administration and which we are honouring, do not include audiology. However, it is intended that the new waiting time target, which was pledged in the SNP manifesto, will include audiology. I will announce further details of that target later this year. My colleague, the Minister for Public Health, is glowering at me, because she is due to make an announcement on that subject soon. I had better not steal her thunder any more than I already have done.

**Aileen Campbell (South of Scotland) (SNP):** I whole-heartedly applaud the Government's statement. My question is about not hidden waiting lists per se, but waiting times in general. Does the cabinet secretary share my anger at the situation in which a constituent of mine finds himself? He was put on a waiting list in Glasgow for an operation that was not performed in Lanarkshire, where he lives. However, after waiting for two years to reach the top of that list he was taken off the list and put at the bottom of the waiting list in Lanarkshire, because the operation is now carried out there. He must start the waiting process again, which is unfortunate. Does the Government appreciate the frustration that he felt? Does it agree that such incidents demonstrate the previous Executive's incompetence in managing the health service in Scotland?

**Nicola Sturgeon:** I do not find it difficult to be consensual on that last point.

It is not possible for me to comment on the detail of individual cases, but if Aileen Campbell writes to me about a specific case I will of course investigate it and respond to her. However, I make two general points. First, it is clear that specialist treatment is not always provided in every health board area, for good reasons, and that some patients will be required to go to another health board area for specialist treatment. Secondly, what Aileen Campbell describes sounds as though it could be—I stress “could be”, because I do not have all the details—a case of someone being given an ASC because their treatment was considered to be highly specialised or of low clinical priority. If that is the case, I stress to her, as I stressed to Christine Grahame, that under the new system all patients will be treated within the maximum waiting time guarantee and there will be no exclusions for those categories.

**Rhoda Grant (Highlands and Islands) (Lab):** What improvements have taken place as a result of the extra measures to tackle cancer waiting times in the NHS Highland area that were announced in August? What impact have waiting

times had on patient outcomes in the area? Is the cabinet secretary aware of concerns that staff training and development can interrupt a patient's treatment, because NHS Highland has a small specialist team? Will she consider placing a duty on other health boards to provide back-up and assistance in such circumstances?

I ask for clarification on answers that the cabinet secretary gave to members who asked about bureaucracy. Under the new appointments system, every patient who is offered an appointment in the health service—not just patients who want to change their appointments—must phone the hospital. Those phone calls need to be answered, so more administrators are needed. Can the cabinet secretary assure us that resources will not come out of front-line patient care?

**Nicola Sturgeon:** Yes, I can give that assurance.

With the Presiding Officer's permission, I will take a little time to answer Rhoda Grant's questions about cancer waiting times, because I think that she raised three issues. First, on improvements in NHS Highland, the board has continued to work in collaboration with the cancer performance support team, to integrate patient pathways across all hospitals in the board's area and support faster diagnosis and treatment for people with cancer. We anticipate that the success of the measures will begin to show in the next quarterly performance figures, which are being collated and analysed. We are focusing on ensuring continued, sustainable improvements during the coming months.

On how shorter cancer waiting times feed into better outcomes for patients, survival analysis is normally performed at five-yearly intervals. I expect updated Scotland-wide survival data to be available towards the end of this year. In addition, clinicians in the five regional cancer networks are beginning to consider outcomes as well as performance against the national clinical standards. The work is in its early days and the first of the specialist networks to undertake such an analysis will do so on breast cancer services. That work will be reported later this year.

On oncology staffing and support in NHS Highland, I acknowledge the points that Rhoda Grant made. The aim of “Cancer in Scotland: Radiotherapy Activity Planning for Scotland 2011-2015”, which is being implemented, is for the development of a single radiotherapy service for Scotland that sees services delivered out from the five cancer centres. In support of that, and particularly in support of the Inverness cancer centre, the Scottish radiography advisory group agreed formally at a recent meeting to draw up a forward contingency plan to ensure that centres

would make available additional support for patient needs over the next 18 to 24 months. I hope that that substantial response answers Rhoda Grant's question. If she requires more detail on any of the important points that she raised, I will be happy to provide it in writing.

**Jackson Carlaw (West of Scotland) (Con):**

Like most members, I welcome the cabinet secretary's statement and congratulate her on it. That said, members are entitled to be reasonably concerned about the effective management of all those patient clocks.

Will the cabinet secretary confirm that reliable information is still not available on how long patients are waiting for many of the diagnostic checks that may, in turn, lead to an appointment or admission? Will she confirm her intentions in that regard? More urgently, given the Government's commitment to a patients' rights bill, under which matters would be made legally enforceable, does she recognise that in consolidating waiting lists she and her Government are making a huge error of judgment in maintaining their prejudice against anyone in the independent sector having an additional role in achieving her—or, indeed, any—Government's future objectives? Unless she and her Government colleagues overcome that prejudice, surely they will find themselves standing before us in due course, all fur coat and no suitable protection.

**Nicola Sturgeon:** I will be accountable—as will the entire Government—for the delivery of our manifesto commitment on waiting times.

As I have said previously in the chamber, health boards use, and will continue to use, the independent sector at the margins and where it is in their interest to do that. Taxpayers' investment in health care should be made in the public national health service; it should be engaged in capacity building in that and not the independent sector. I suspect that Jackson Carlaw and I will have to agree to differ on the matter.

Jackson Carlaw's point on diagnostic tests is absolutely central to all this. We now have waiting time guarantees for certain diagnostic tests, which is a step in the right direction. Indeed, I concede that that was initiated by the previous Government—how is that for consensus? As the member knows, our intention is to move to a whole journey waiting time of 18 weeks from GP referral to treatment. That covers all aspects of the patient journey. Clearly, in order to meet that guarantee, the time that patients spend waiting for diagnostic tests will have to reduce. I hope that he will accept that the whole journey waiting time guarantee is a better way forward; I look forward to having his support as we move towards it.

**Bill Kidd (Glasgow) (SNP):** I thank the cabinet secretary for her statement. As a former health board worker, I have observed the present system and welcome the new, fairer system. What measures will she take to ensure that health boards implement the new system and what steps will she take to monitor it?

**Nicola Sturgeon:** The question is an important one. As I said, simply changing the system does not necessarily solve the problem. When a shift was made from deferred waiting lists to availability status codes, all that changed was the name, not the reality. I am determined that this system will be not only better, but fully transparent.

In the statement, I outlined the monitoring arrangements that I will put in place. ISD Scotland will publish full statistics and details as part of the quarterly publication of waiting time statistics. That information will be available for everyone in Scotland to see. In addition, patients will be able to ask boards for information on their circumstances. As I also said, I have invited Audit Scotland to conduct a review of how the procedures are working in practice at a time of its choosing. I believe that the system can get rid of hidden waiting lists, once and for all. It will do so only if the system is fully transparent.

**Alison McInnes (North East Scotland) (LD):**

The cabinet secretary said that nearly 2,000 patients with an ASC had waited over a year for their treatment on the ground that they were medically unfit. Will her new statistics, which will be published in March 2008, include those patients who, because they are medically unfit for treatment, have been removed from waiting lists and returned to their GPs untreated? Does she agree that those people will be more effectively hidden than they are under the current arrangements? Surely—in her own words—that is “difficult to understand” and “impossible to explain”.

**Nicola Sturgeon:** With the greatest respect to Alison McInnes, I think that she misunderstood or perhaps did not hear what I said in my statement. The statistics that will be published on the ISD Scotland website every quarter will include the number of people who have been referred back to a GP by a hospital. That information will be fully open to scrutiny.

There are occasions on which a patient cannot be treated, for example, if they are overweight and the condition is likely to continue indefinitely. I am sure that Richard Simpson will understand and agree that it is better for such patients to be referred back to their GP to be managed in primary care and to have the right intervention to deal with the underlying condition so that treatment becomes possible. The key point is that all that information will be published for scrutiny by

the public and by members—the Government and I will be held to account on that.

**Helen Eadie (Dunfermline East) (Lab):** One of the big priorities for the previous Labour Administration was on life-threatening diseases. I have concerns about the minister's statement. How will the minister guarantee that treatments, particularly by specialist consultants, will commence within the time that she has set out? Until now, patients with cancer and other life-threatening conditions have been top priority, even if that meant that patients with non-life-threatening conditions have had to wait a little longer.

**Nicola Sturgeon:** Everybody in the NHS should know how long they will have to wait for treatment. Even conditions that are not life threatening can be traumatic and can cause great inconvenience to patients. It is right that patients have maximum waiting time guarantees. However, I agree with Helen Eadie that life-threatening conditions should be given priority. That is why, for example, the waiting time for cancer cases is much shorter than the waiting time for some other cases. The target of a 62-day wait for cancer treatment, which was set by the previous Government of which Helen Eadie was a representative, was supposed to have been met by the end of 2005, but it had still not been met by the time that her party left office in May. That is why I have said that it is an absolute priority to meet that target by the end of this year. I am monitoring the situation weekly to ensure that the target is met in the interests of cancer patients throughout the country.

**Keith Brown (Ochil) (SNP):** As the cabinet secretary mentioned, the Labour Party claimed—and, incredibly, still claims—that there were never hidden waiting lists, yet we know that more than 35,000 patients were on availability status codes and had effectively lost their waiting time guarantee. The injustice was compounded by the fact that many of those people were kept in the dark and were not informed that they had lost their waiting time guarantee. Will the cabinet secretary further clarify the extent to which patients will be kept informed about what is happening to them as they go through the process?

**Nicola Sturgeon:** I agree with Keith Brown about the apparent Labour confusion. One minute, the system is great and all Labour's idea, but the next minute it is terribly bureaucratic and a dreadful idea. Labour members really should make up their minds—one minute, they are getting rid of hidden waiting lists, but the next minute, they are denying that hidden waiting lists even exist.

Keith Brown's point is important. One of the serious problems with availability status codes was that patients often did not know that they had a code, let alone why they had one. The difference with the new system is that patients will be fully

informed. Any period of unavailability for any reason will be discussed with the patient, they will be advised of it, their case will be kept under regular review and they will know throughout the process what their entitlement is and what is happening with their treatment. That is a vast difference from the system that went before. The new system will be much better for patients in Scotland.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I ask for clarification on three aspects of the minister's statement. She said that the third key change will be to the hospital appointments system and that, in future, patients

"will be offered a choice of at least two appointment dates, with ... three weeks' notice."

I would welcome further information on that. How will the system be managed? How will clinicians know what their patient lists will be?

The minister said that patients will be able to postpone or rearrange an appointment "not once, but twice". If I heard her correctly, she said that if an appointment is rearranged more than twice, the clock will go back to zero. That sounds more like a time bomb than a time clock.

Regarding the minister's response to other colleagues on audiology waiting times, when will her deputy make that announcement to the chamber?

**Nicola Sturgeon:** I confirm to Cathie Craigie that the Minister for Public Health will make that announcement in due course and in the appropriate manner. I hope that she welcomes the announcement when it is made.

The member asked about the postponement of appointments. In case she has not had this drawn to her attention by constituents—I would find that amazing—I point out that the real time bomb is the one that exists at the moment, in which if a patient asks to postpone an appointment, they may have their waiting time guarantee removed completely and end up waiting two years or more for treatment. That is entirely unacceptable. Under the new system, a patient will have the opportunity to ask for a postponement of an appointment on two occasions. If they do that, their waiting time clock will go back to zero, but they have a guarantee of being treated within 18 weeks from that point. They have no guarantee of being treated at all under the current system. The patients to whom I speak will consider that to be a substantial change.

I am not sure that I entirely followed the point that was being made about the choice of two appointments. When patients are offered appointments in the future, they will be offered a choice of two dates. In any system that is at all

patient centred and which takes any account of the everyday lives of patients, that is the least that patients can expect. To those members who scoff at these patient-focused changes, I say that the NHS is working hard and enthusiastically to implement the changes as of January next year. Members may not agree with the changes, but NHS boards and staff around the country want to deliver the very best service for their patients.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** On the whole journey waiting time guarantee, the cabinet secretary said:

“The clock starts when the general practitioner’s referral is received by the hospital or when a decision is made to provide treatment.”

She went on to say:

“The patient must be seen or treated before the clock shows the maximum waiting time.”

Will she confirm that that in fact applies to a first consultant appointment, so that the waiting time guarantee would actually be satisfied with simply a first consultant appointment because the patient would have been seen only?

Furthermore, the cabinet secretary said that if the patient has unavoidably had to postpone or rearrange an appointment, the hospital will contact the patient offering two further dates with at least 21 days’ notice. A constituent of mine may unavoidably have to rearrange or postpone an appointment and the hospital may subsequently contact them to say, “There is an opportunity to do your hip replacement next week.” Is the cabinet secretary banning that because there has to be at least 21 days’ notice?

**Nicola Sturgeon:** Unfortunately, Jeremy Purvis has completely misunderstood the statement; I hope that he will take special care to read the leaflet when he goes back to his office. I was not talking about the new 18-week whole journey waiting time, which will be delivered by 2011. Under that new waiting time, the journey will be from GP referral to treatment. Under the current system, we have two stages in waiting times, one of which is 18 weeks from GP referral to outpatient treatment; that is what I meant by being “seen”. The second part of the journey is 18 weeks from outpatient treatment to being “treated”; that is what I meant by being treated. I hope that that clears matters up for Jeremy Purvis.

Patients will be given three weeks’ notice of an appointment. If a patient is offered an appointment earlier than that and is able and willing to take it, of course they will do so. In the spirit of consensus, I say that Jeremy Purvis’s final point was rather silly.

## European Treaty

**The Presiding Officer (Alex Fergusson):** The next item of business is a debate on the European treaty.

15:34

**The Minister for Europe, External Affairs and Culture (Linda Fabiani):** As a minister of the Scottish Government, it is a great pleasure for me to lead the debate in our Parliament. Some members will point to the fact that the Scotland Act 1998 prevents this Government from directly participating in the international discussions that are under way on the draft European Union reform treaty. Our clear view is that, for all the influencing that we can do—and, in fact, do—through the United Kingdom Government, Scotland would be best able to represent its interests as an independent member state of the European Union.

**Irene Oldfather (Cunninghame South) (Lab):** Will the minister give way?

**Linda Fabiani:** No.

The devolution settlement demands that the Scottish Government and Scottish Parliament be closely involved in a huge range of European issues. Much of the legislation that the Scottish Parliament deals with starts in Brussels, and decisions that are made at the European level affect the lives of everyone who lives in Scotland.

Members who were at yesterday’s European and External Relations Committee meeting know first hand the variety and detail of this Government’s EU priorities. Those priorities and our engagement with the EU in general reflect the fact that it yields great economic, social and cultural benefit to the people of Scotland. The international co-operation that it affords means that many of our priorities on the environment, the economy and energy will be delivered in partnership with it and its member states.

However, anyone who followed the discussion at the committee yesterday will also know how difficult and divisive any treaty reform can be. Therefore, it is entirely right that the Parliament should consider and form views on the structure and processes of the European Union. Although we may not always like every outcome of the EU’s activities, this Government will be a reliable, consistent and competent partner on the European stage. Members will be aware that the First Minister and I visited Brussels in the first 100 days of this Government to start building the contacts that will allow us to raise Scotland’s voice in Europe.

I will mention some facts about the draft EU reform treaty. First, the timescales and process



that emerged from the European Council in June were clear but demanding. The intergovernmental conference has been tasked with producing a text for agreement in mid-October, with formal sign-off at the European Council in December. The mandate to which the IGC is working means that much of what will be in the reform treaty text that emerges is already decided. Equally important, much is still up for grabs. I would not take seriously the claims of anyone who thinks that they can predict how all the discussions will go, but it is right that this Government is clear about what it can and cannot accept.

It is worth saying what is good about the treaty that is likely to emerge. Negotiating a document among 27 partners with a wide range of interests will never be easy going, but the treaty is an important contribution—indeed, it is the only one on the table—to helping an enlarged EU do some of its business better. We should all welcome steps towards improving the efficiency and transparency of the governance of the EU.

Some members are, of course, sceptical of the European Union. I am sure that they will welcome the clarity that the reform treaty brings to the voluntary nature of membership of the EU. It seems likely that the treaty will include a provision that asserts the right of any member state to withdraw from the union. There is no irrevocable transfer of powers to the union.

At the European and External Relations Committee yesterday, Margo MacDonald asked about passerelle clauses, and I will answer her question now. Some passerelle clauses exist in the current treaties. New ones in the reform treaty would extend the use of procedures that allow decisions that currently require unanimity to be taken by majority voting. Some people have raised concerns about those clauses, which would allow simplified treaty revision without an intergovernmental conference—I understand that those provisions are what Ms MacDonald referred to yesterday as “the ratchet clause”. I understand those concerns, but the fact that any such change requires the agreement of all the member states and that, in the most significant cases, a single national Parliament is allowed to block such a move means that there is comfort that such flexibility will not be misused. That in-built veto on the loss of a veto is a decision that the UK should accept but, of course, I would be more comfortable if we, like many small independent countries, were at the top table considering directly whether that was the correct thing to do.

**Margo MacDonald (Lothians) (Ind):** The minister and I covered some of this ground yesterday. Does she understand my concern that it is a poor bargain to trade a veto, which finishes a matter once and for all, for her assurance that

the system is likely to work well? The two things cannot be equated legally, and it is an extension of the law.

**Linda Fabiani:** It is a veto on a veto that Scotland will not have. We should have it; we should be up there with all the other small independent countries that will have that right if the treaty goes through.

As it is a reform treaty and not a constitution, we should welcome the clear delineation of competences. However, this Government profoundly opposes where things have got to with the common fisheries policy. The identification of conservation of marine biological resources as an exclusive competence of the EU is a measure to which we continue to object. It puts the objectionable common fisheries policy directly into the treaty base for the first time and would make it all the harder to retreat from that policy, as we wish to.

My party made its opposition clear when the issue was discussed during the drawing up of the previous treaty, and this Government will continue to make the case for reform of the common fisheries policy and for returning competence over the conservation of marine biological resources to coastal states. Had we been at the negotiating table directly, we could have made clear to all concerned the depth of our opposition.

**Irene Oldfather rose—**

**Linda Fabiani:** We are also not happy with some of the institutional effects that will probably emerge from the treaty. As a result of the enlargement process, the UK Government is preparing once again to reduce the number of members of the European Parliament who represent Scotland. We have made our opposition to that clear, but the solution is also clear: an independent Scotland would have twice the number of MEPs that it currently has. In the short term, we think that there is a strong case for looking again at the UK legislation that provides that Scotland will have only 6 MEPs from 2009.

**Irene Oldfather rose—**

**Linda Fabiani:** One area that is up for grabs at the IGC and on which we are working closely with the UK Government is the framework for justice and home affairs policy. We supported the UK line at the European Council in June and are working with the UK Government to continue to ensure that the UK negotiating position at the IGC takes full account of our interests in defending the unique justice and legal systems in Scotland.

On many of the issues currently under consideration, the challenge to us following any ratification will be to ensure that the UK Government implements the treaty framework in a

way that allows Scottish interests to be reflected properly. The same is true of this Parliament and its Westminster equivalent in relation to the new subsidiarity proposals. I hope that this Parliament will be able to build a constructive relationship with Westminster to ensure that Scotland's voice is present in the operation of the new mechanism.

In conclusion, I hope that members share my view that this Government and this Parliament should continue to take a close interest in developments at the IGC and beyond, but I reiterate that any deal that entrenches the common fisheries policy would be something that this Government would oppose clearly and vocally.

15:43

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I have a sense of déjà vu, as I find myself on the Opposition front bench for the first time since the Tory Government in the 1990s—even more so as I once again debate a European treaty. I am pleased that this time we are having an afternoon debate rather than the hours and hours of all-night sittings that we endured with the Maastricht treaty in 1992. I point out to Conservative colleagues that the Maastricht treaty was infinitely more significant in its transfer of powers and its extension of qualified majority voting than the treaty that we are debating today. I also point out to them that the Tory Government at the time was implacably opposed to a referendum, as Baroness Thatcher had been on the even more far-reaching Single European Act six years before.

I thank Linda Fabiani for giving us some limited pointers today and at the European and External Relations Committee yesterday about the Government's attitude to the treaty. I must say that before that I was completely in the dark about SNP policy. All I had to go by was *The Herald* on 7 September quoting a senior source, who said:

"The party is not sure whether it wants a referendum, and if there is one, it is not sure which way it would campaign".

Come to think of it, Linda Fabiani addressed neither of those issues in her speech.

We in the Labour Party believe that the amending treaty will allow the EU to move on from debates about institutions to creating an outward-looking Europe, which we desperately need to meet the fundamental challenges of globalisation, climate change, terrorism and international development.

The treaty does not embody a far-reaching European constitution, although no doubt the next speaker will argue that it does. It is a traditional amending treaty, with some pragmatic evolutionary changes that streamline decision making, improve efficiency and safeguard

democratic accountability through providing an enhanced role for the Parliaments of member states. As the Conservative MEP John Purvis said at the European and External Relations Committee yesterday:

"We need to do something to modernise the Community so that it works properly."—[*Official Report, European and External Relations Committee*, 18 September 2007; c 49.]

The treaty does precisely that: it sets out the EU's powers and their limits without changing fundamentally the relationship between the EU and member states.

**Margo MacDonald:** I thank Malcolm Chisholm for giving way and welcome him to the Labour front bench in his new role. Does he think that Jean-Claude Juncker, the Prime Minister of Luxembourg, is telling lies—or does he just have it wrong—when he says:

"Britain is different. Of course there will be transfers of sovereignty. But would I be intelligent to draw the attention of public opinion to this fact"?

**Malcolm Chisholm:** There are obviously limited transfers, but the significance of the UK position is that the UK Government has not bought into the whole treaty, so the treaty that it has agreed is different in significant respects from the treaty in Luxembourg or other European countries.

I thought that Margo MacDonald was going to ask about qualified majority voting, which is one of the more controversial issues that has arisen in connection with the treaty. In that regard, the extensions that apply to the UK are modest but sensible.

I turn to the issue of a referendum, which I suspect will dominate the debate. As I have said, the treaty is not a constitutional treaty as originally envisaged, but a standard reforming treaty. There is therefore no case for holding a referendum on the basis of precedent, and no such case arises from the Labour UK manifesto; neither do I believe that there is a case in principle, given that referendums should be reserved for areas of substantial constitutional change.

**Gavin Brown (Lothians) (Con):** Will the member explain what the differences are between the previous constitution, which was rejected, and the current treaty?

**George Foulkes (Lothians) (Lab):** That would take all day.

**Malcolm Chisholm:** As my friend indicates, that would take a great deal of time, because many significant changes have been made. Crucially, the UK has decided not to be part of areas of the treaty, particularly in judicial and home affairs, which Linda Fabiani welcomed, and in many other significant areas such as tax, social security and the protocol on the charter.

It will be interesting to hear the views of other parties on that—although I fear that their views will be predictable. The Tories' call for a referendum is pure game playing and is born of political desperation. It makes a nonsense of the strongly stated previous position that they had when they were in Government and is based on a misrepresentation of what the treaty involves. There is far less transfer in this treaty than in the previous treaties and the constitutional concept has been abandoned.

In a brief note submitted yesterday, the Scottish Government seemed to indicate that it would support the treaty

"but not if the Government's red line concerning exclusive competence over marine biological resources under the CPF is ignored."

Linda Fabiani seemed to indicate yesterday in evidence to the European and External Relations Committee—although, again, not today—that that would trigger support for a referendum. However, there is nothing new in the treaty that changes the current situation in that regard, so it is not clear to me why the SNP would support a referendum—and, presumably, a no vote—merely to end up with the status quo in relation to the common fisheries policy if the treaty was rejected. Perhaps the SNP needs to clarify its position on the common fisheries policy more generally. Does it still support withdrawal from the CFP, with the inevitable consequence of withdrawal from the EU, or has that policy gone to the shredder as well?

The trouble is that the SNP's whole position on Europe is weak, inconsistent and full of contradictions, quite apart from the serious difficulties that were highlighted by Commissioner Borg in his interview in *The Scotsman* today. It is clear from that interview that it might take months or even years for an independent Scotland to renegotiate entry into the EU, assuming that that was still SNP policy.

**The Minister for Parliamentary Business (Bruce Crawford):** Will the member take an intervention?

**Malcolm Chisholm:** I am in my last minute, so I cannot take an intervention.

**The Deputy Presiding Officer (Trish Godman):** I will allow a quick intervention.

**Bruce Crawford:** Commissioner Borg has said that yesterday he gave a personal opinion that was taken out of context and he made it clear that what he said was all speculation. He also said that it was not in his competence to comment on that area. Does the member accept that? Does he accept that what he is saying is a dose of spurious nonsense?

**Malcolm Chisholm:** I accept that there are a range of views. I was merely quoting the views of a commissioner, whose views obviously have to be taken seriously.

The truth is that while the SNP prevaricates, Labour has taken decisive action to negotiate a progressive and evolutionary treaty that is good for Scotland, good for Britain and good for Europe. I commend it to the chamber.

**The Deputy Presiding Officer:** I call Ted Brocklebank. Mr Brocklebank, you have four minutes.

15:49

**Ted Brocklebank (Mid Scotland and Fife) (Con):** Thank you, Presiding Officer.

"To me, this old ideological debate about Britain in Europe seems increasingly out of place and time ... We need ... a radical reform of the EU budget and an end to backward-looking attempts at European state-building ... We do not need a constitutional treaty that fundamentally changes the relationship between member states and the EU."

I hope that nobody on the Labour benches disagrees with those comments, which were made in a recent article in *The Sunday Times* by Ed Balls, Gordon Brown's closest Cabinet confidant. If that is what Ed Balls is writing, it is what Gordon Brown is thinking—and there is nothing in there that Conservatives would disagree with.

If one is to believe those who oppose a referendum—such as Malcolm Chisholm, whom I welcome to the Opposition front bench—the reform treaty is not about fundamental change or transfer of sovereignty. That, however, is not what Giscard D'Estaing—the man who drafted the original treaty—thinks. He claims that the new version

"still contains all the key elements"

of the constitution. The Spanish foreign minister Miguel Angel Moratinos says that the reform treaty still contains 98 per cent of the constitutional treaty, and that

"the wrapping has been changed, but not the content".

Far from giving up on Ed Balls's backward-looking state building, all the ingredients of the superstate are still there.

We were told that the role of EU foreign minister had been ditched; in fact, just the name has been changed. The new title is high representative of the Union for foreign affairs and security policy. We are still to have an EU President. He will have 3,500 civil servants and will speak to the world in our name—he will be, in effect, Mr Europe.

As for our vaunted foreign policy safeguard—the most important of Gordon Brown's red-line

issues—we now learn that the guarantees on foreign policy are not legally binding. Conservatives accept that different treaty arrangements are needed for a Union of 27 countries—compared the arrangements that were needed for a Union of six originally—but that is not what the reform treaty is, and Gordon Brown really has to stop trying to convince us that it is. In the new mood of consensus, I look forward to having a consensual debate, and I cannot see why it should not be consensual—after all, members of every party seem to want a referendum in some shape or form. Tony Blair said:

“you cannot ... have a situation where you get a rejection of the treaty and bring it back with a few amendments”.

So say all of us, and—as we know—Labour’s 2005 manifesto promised us a referendum. Labour’s former Minister for Europe, Keith Vaz, and a growing number of back benchers and trade unionists have all said that they favour a referendum, so why is Gordon Brown—and Malcolm Chisholm—prevaricating?

**Irene Oldfather:** Will the member take an intervention?

**Ted Brocklebank:** Yes, if Irene Oldfather is brief.

**Irene Oldfather:** I have a lot of questions to ask the member, but I will make my intervention brief. Why did the Conservatives not support a referendum on the Maastricht treaty, which far further extended the powers of the European Union?

**Ted Brocklebank:** The question today is, why did Labour pledge a referendum in its manifesto and then go back on that pledge?

Linda Fabiani says that the SNP might campaign for a referendum if certain red-line issues, including aspects of fisheries, are not addressed in the final text of the treaty. The Lib Dems, too, have belatedly come round to the view that a referendum might not be a bad idea, although Sir Ming’s idea is that the referendum should be on UK membership of the EU. I thought that we had already had that referendum. Maybe Ming has been converted to the Québécois notion of neverendums.

As we know, European treaty negotiations are reserved to another place and Gordon Brown will make the eventual decision, but today we have an excellent opportunity to send him a unified message from the Scottish Parliament. I believe that the Prime Minister’s instincts are against the building of a European superstate. Ed Balls—his master’s voice—says that that is what was wrong with the constitutional treaty, but as we have seen and heard, the reform treaty is 98 per cent of the original. I ask Gordon Brown to do what Tony Blair

promised: to put his trust in the British people and give us a referendum.

15:54

**Robert Brown (Glasgow) (LD):** This is a highly relevant debate on a subject of vital importance to Scotland, the United Kingdom and the future direction of Europe. The EU reform treaty is rather like an operation to unclog heart valves and blood vessels and make the body work more efficiently. It aims to make the European Union, which was designed for a membership of six, work for a Community of 27 countries. It focuses not on the tedious constitutional debate itself but on the things that matter for Europe’s citizens, such as energy security, climate change, organised crime and terrorism, and a more effective international voice for Europe.

I say clearly that the treaty is good for Scotland and good for Britain. It will streamline the Commission, allow more effective decision making in the Council and ensure that democratic accountability is transformed, not just by allowing the European Parliament a more substantial role but by giving national Parliaments a central role, which Linda Fabiani touched on.

As it happens, the changes will increase the weight given to population and therefore the UK’s share of the votes, thereby increasing Scotland’s influence through the United Kingdom. Those changes are important, but they do not increase the power of the European Union as such and they certainly do not merit the furore that we have had from the ever-present Eurosceptics, clearly still alive and well on the Conservative benches—as they have been for the past 30 years. During that time, the Conservative party has been motivated—and blighted—by Europe but, as was pointed out earlier, it did not under the saintly Mrs Thatcher allow a referendum on the much further reaching changes in the Maastricht treaty.

**Gavin Brown:** Will the member give way?

**Margo MacDonald:** Will the member give way?

**Robert Brown:** I will carry on a little, if members do not mind.

I want to make two central points. The first is that it is high time that we changed the tone of the debate from one of carping criticism and strident negativity to one that puts Britain at the heart of Europe—the words, but unfortunately not always the attitude, of Tony Blair. An influential Britain or an irrelevant Britain—that is the choice facing us, which Ted Brocklebank and others should recognise. It is time for us to accept and welcome the European Union.

My second point is directed at the SNP Government. Governments should govern, but the

SNP Administration clearly just administers. It is unbelievable that we are not presented with a motion on the SNP Government's attitude to the treaty, which is due to be signed this autumn in Lisbon.

**Bruce Crawford:** Does the member accept that the business managers from both the Conservative and Labour parties agreed that we should have a debate without a motion? We have had that discussion already, so he is fighting old ground that is not really relevant. Should he not get on to the matter in front of us?

**Robert Brown:** With respect, I am not fighting old ground: the point is fundamental to how the Parliament operates. We should be holding the SNP Government to account—[*Interruption.*] I am sorry, but if Mr Crawford wants to make further interventions, let him stand up and offer them rather than make comments from the side.

My point is about the accountability of the SNP Government. The truth is that the SNP has no policies on the treaty. A policy is perhaps beginning to come out from Linda Fabiani, but it should be before members for consideration. I understand that she said yesterday that the SNP Government's priority was to get the best deal for Scotland. Pardon me, but I thought that that was the approach of the previous Executive and, indeed, that it would be the approach of any alternative Scottish Executive. It hardly informs the debate to know that.

Linda Fabiani also said as recently as yesterday that the SNP had yet to take a view on the treaty. As Malcolm Chisholm rightly said, it would help to know whether the SNP still supports the scrapping of the common fisheries policy. The comments of the fisheries commissioner, who said that scrapping it was not legally possible and who also negated the idea that an independent Scotland would have a seamless entry into the EU, are very important in that context. What, too, is the SNP position on the charter of fundamental rights or the voting reforms?

I hope that the minister will tell us why we have no Government motion on the matter, why the SNP is running away from the issue, why it has no stated position on vital questions and whether she agrees that such a position undermines the SNP's pretensions as a Government—not just of a devolved Scotland but of any sort.

15:58

**Irene Oldfather (Cunninghame South) (Lab):** The challenges of treaty reform include how to enlarge Europe and be inclusive and at the same time produce sensible legislation in an architecture that allows appropriate scrutiny and ensures that citizens believe that we are acting in their best

interests. We must add to that the importance of subsidiarity and proportionality, ensuring that Europe acts only when necessary and that other spheres of government have their rights protected, and the challenge of balancing the internal market with appropriate social measures to improve the living standards of citizens.

In rising to those challenges, we have intergovernmentally agreed the treaty of Rome, the Single European Act, the Maastricht treaty and the treaties of Amsterdam and Nice. We now have the opportunity to agree the reform treaty. We have not had a referendum on any of the previous treaties, and at this point 26 of the 27 member states do not intend to call a referendum on the reform treaty.

**David McLetchie (Edinburgh Pentlands) (Con):** Will the member take an intervention?

**Irene Oldfather:** No—because no one took my interventions, and because I have a lot to say. If I have time later, I will let Mr McLetchie in, but I want to pick up on the points that the SNP would not let me in on.

Article 3.1 of the amended treaty sets out that the clear role of European Union is to

“promote peace, its values and the well-being of its peoples.”

I want to move this discussion back to the pragmatic—back to the basics and away from the constitutional issues and the academic debates. Let us apply the test and ask ourselves this: does the amended treaty allow us, as Scottish politicians in the Scottish Parliament, to do our job better? I suggest that it does. When the European and External Relations Committee yesterday asked MEPs of all political persuasions—including John Purvis—whether they generally supported the treaty, the answer, with a few caveats, was yes. Without reform, the European policy-making process will grind if not to a halt at least to a snail's pace. Anyone who has been involved in the process post-enlargement knows exactly what that would mean.

In the previous session of Parliament, the European and External Relations Committee looked closely at the issue of scrutiny, and we will continue our deliberations during this session. As parliamentarians, it is our job to ensure that we thoroughly scrutinise European legislation. The revised treaty acknowledges, for the first time, that national Parliaments should have a role in deciding whether an EU action is necessary. Article 8b specifically refers to the “principle of participatory democracy” and the right of citizens to be consulted. That will allow us to influence the debate early and to flag up, via the member state, areas in which we feel that subsidiarity is not being applied and our policy interests not protected.

I am running late but I have to pick up on some points that the minister made but did not clarify. The SNP's position is as clear as mud. The minister said that fishing and the reduction in the number of MEPs in Scotland were two of the most important issues for her, yet she came to the European and External Relations Committee and told us that, when she went to the joint ministerial committee on Europe, she did not raise either of those issues. Will she explain that to the Parliament?

The minister may know Richard Corbett, a constitutional expert who has written a number of books on the European Parliament. He has clearly said that the draft reform treaty makes no changes to the allocation of competence in the common fisheries policy or to the conservation of marine biological resources under the policy. Community competence over fisheries is shared, except for conservation measures, where it has been exclusive since the UK's treaty of accession came into force in 1979. Where has the SNP been on this issue for the past 28 years, if it claims that fishing is now a red-line issue? I look forward to hearing the minister summing up.

16:03

**Keith Brown (Ochil) (SNP):** I start by offering my apologies: I will have to leave the debate early as some constituents will be making representations on the debate immediately after decision time.

I congratulate the minister on the proactive and pragmatic approach that she and the Government are taking to ensure that Scotland's interests are properly represented and promoted during negotiations on the treaty.

As a former member of the European Committee of the Regions, and as Scotland's sole representative on the COR as an alternate member to the last constitutional IGC, I am well aware of the extent to which the period immediately prior to a decision of the European Council is often the most productive for effecting changes and influencing the final treaty. The minister is absolutely right not to jeopardise Scotland's interests by prematurely anticipating the contents of the draft treaty.

**Robert Brown:** Will the member take an intervention?

**Keith Brown:** No, but I will try to address the point that Robert Brown made. We do not have a motion today simply because we do not know what the treaty will say. What kind of motion would we have? It is entirely right to leave the options open in the meantime.

I also want to address a point that Malcolm Chisholm made. While I was reading today's papers, I remembered that, in the seven years during which I worked in Brussels, the only people in the whole of the European Union who strolled the corridors of power trying to convince everyone else that Scotland would be some kind of pariah standing apart from the European Union were the fevered Labour members. Nobody else I spoke to, from any group or from any country, held that view. It is interesting to consider what would happen if Commissioner Borg's statements were carried to their logical conclusion. For example, if Belgium broke up—as is currently being talked about by all the mainstream parties—his office would be outside the European Union in Brussels. It is a strange logic, but some people find it attractive.

It is sad but true that the Scottish Parliament has no direct role yet in negotiating or ratifying the treaty, but Scotland has vital interests in key issues such as fisheries policy, the Scottish justice and legal system, energy policy and representation in the European Parliament that cannot be properly promoted without the clear voice of Scotland's Government being heard. To maximise that voice, I hope that, wherever possible—I realise that doing so will sometimes not be possible—parties will take a team Scotland approach that seeks to galvanise the views of our MEPs of whichever party, members of the Scottish Parliament's European and External Relations Committee of whichever party, and Scotland's representatives on the European Committee of the Regions from whichever nominating institution and of whichever party, and that all parties will seek to give mutual support and reinforce areas of agreement that are in Scotland's interests. That was the key role that the European elected members information and liaison exchange group—EMILE, which was set up by the former First Minister, Mr McConnell some years ago, should have had. It never carried out that role, but most people in the parties outwith the then Scottish Executive believed that that would have been its most productive role.

I say to those who are sceptical that we can find areas of agreement on which we can work together, that all the parties that are represented in the chamber—I think—opposed reducing the number of MEPs from Scotland from seven to six, and that there is broad agreement in areas that relate to Scotland's distinct legal system. I make that point because, in my experience in Europe, countries such as the Republic of Ireland have for many years achieved fantastic deals from Brussels as a result of all the parties adopting a united approach. All the parties in that country work together as team Ireland and achieve a great deal by doing so. Obviously, they have

fundamental differences but, by and large, they work together when it comes to important national interests.

It is right that the EU treaty should streamline the EU and that it should start to return power to national Parliaments—indeed, I hope that one day it will return power to the Scottish Parliament. That such changes should be considered in a union of 27 members is right. It is inevitable that compromises will be made—that is simply part of the game—but we should take a team Scotland approach in the areas in which we can agree, so that, like countries such as Ireland, we work together and achieve real progress in Scotland's interest.

16:07

**George Foulkes (Lothians) (Lab):** I, too, welcome this debate. I agree with Linda Fabiani that it is competent, but I also agree with Robert Brown that it would have been better if we had a motion and amendments.

I hope that Ted Brocklebank will forgive me for giving him a wee history lesson. On 1 January 1973, a Tory Government took the biggest step with respect to Europe by taking us into it without holding a referendum, although a commitment on holding a referendum was included in the Tories' manifesto. A Labour Government then gave the people of Britain the opportunity to vote, and we voted by a majority of two to one in favour of staying in Europe. I remember well what happened: I was the organiser for the European Movement in Scotland and helped to deliver that majority. However, I will not take all the credit for doing so, as I had a keen, young, enthusiastic student working with me who went around Scotland day and night delivering leaflets to ensure that we got a majority. That student was David McLetchie. People are asking where he is today and what his view is. He said to me then that the results confirmed once and for all the United Kingdom path within Europe. I say to Ming Campbell that that did it once and for all. We do not need any more referenda on our place with Europe.

**Margo MacDonald** *rose—*

**George Foulkes:** There is only one member to whom I would give way—Margo.

**Margo MacDonald:** I want to complete the history lesson. I campaigned on the slogan “No voice, no entry” not because I was against what has become the European Union, but because I did not think that George Foulkes had all the answers.

**George Foulkes:** I do not claim to have all the answers, and I know that Margo does not, either.

Malcolm Chisholm and Irene Oldfather have eloquently deployed all the arguments that I wanted to make about the referendum. The treaty is not a greater step—in fact, it is a lesser step—than the Maastricht treaty or the Single European Act. I remember all my late nights as Opposition spokesman on Europe with Robin Cook when we argued strongly against what the Tory Government was doing. There is an irony for Margo.

**The Deputy Presiding Officer (Alasdair Morgan):** The member may be on first-name terms with Margo MacDonald outside the chamber, but he should not be on first-name terms with her inside it.

**George Foulkes:** Indeed. There is an irony, Mrs MacDonald.

My second point is about Alex Salmond's spurious point that an independent Scotland would automatically become a member of the European Union. That is manifest nonsense. Alex Salmond quotes Robin Cook in aid, but I can tell members that I knew Robin Cook. I worked with him day in, day out—night in, night out—on this subject.

**The Deputy Presiding Officer:** One minute.

**George Foulkes:** I know that Robin Cook did not hold that view. David Clark, who was his assistant, has confirmed to me that that was not his view.

**Bruce Crawford:** Will the member give way?

**George Foulkes:** I am in my last minute, for goodness' sake. The member ought to know how this place runs.

It is not just Commissioner Borg who says that an independent Scotland would not become a member. The Scottish Parliament information centre—SPICE, which is an independent advisory information service—has said that there is no precedent for a devolved part of a European Union member state becoming independent and remaining in the EU as a separate entity. Imagine trying to convince Spain that Scotland should become a separate member. It would be impossible.

The SNP is entirely preoccupied with only one issue on Europe, and that is fishing. I can understand why Alex Salmond is concerned about fishing, but I ask whoever will reply on behalf of the SNP Government to clarify what the SNP's view will be if that issue is sorted out. Unless the SNP can answer that question, it will be found wanting yet again.

16:11

**Gavin Brown (Lothians) (Con):** Several members have said how critical it is that the treaty

be passed and incorporated. Robert Brown said that it is needed to unclog the arteries. In 2005, all the same arguments were made about how we so desperately needed a European constitution, but the constitution was rejected by France and the Netherlands. In the two years that have passed since then, the wheels have not fallen off, the institutions still function perfectly well and business carries on pretty much as normal.

At the previous general election, the British people were promised a referendum on the constitution. The proposed treaty is almost identical to that constitution. Therefore, it is only right that we get a referendum on the treaty. Robert Brown criticised the Conservative stance by saying that we are shouting for a referendum. He said that that was clearly wrong, but he forgot to say—I wanted to mention this to him in a point of information—that in the 2005 general election his party promised a referendum on the constitution.

**Bill Wilson (West of Scotland) (SNP):** Given the Tories' obvious enthusiasm for a referendum on the European constitution, why do they not support a referendum on the Scottish constitution? Surely if the people have a right to a referendum on one constitution, they have a right to a referendum on another constitution.

**Gavin Brown:** We on the Conservative benches were taking bets on how long it would take an SNP member to intervene to make that point. I am disappointed that it has taken so long. Let me answer the question directly. At the general election, more than 90 per cent of people voted for parties that pledged to have a referendum on the constitution. At the most recent Scottish Parliament elections, fewer than 40 per cent of people voted for parties that want a referendum on independence for Scotland. One referendum has a clear mandate, the other does not. Most of the seats that the SNP took at the Scottish Parliament election came from parties such as the Scottish Socialist Party, which also wanted independence for Scotland.

Only 10 of the 250 proposals that have been put forward to the intergovernmental conference are different from those that were included in the previous constitution. As Mr Brocklebank clearly outlined, other European leaders have made that point: the Irish Prime Minister has said that 90 per cent of the proposals are the same, the Spanish foreign minister has said that 98 per cent of the proposals are the same.

**Robert Brown:** Will the member take an intervention?

**Gavin Brown:** No thanks.

Furthermore, Valéry Giscard d'Estaing has said that

"the public is being led to adopt, without knowing it, the proposals that we dare not present to them directly."

As we have heard, the treaty will mean an EU president, an EU foreign minister, national vetoes being lost in more than 60 areas, including parts of energy and transport, sections of employment law, the diplomatic service, some parts of justice and home affairs, and intellectual property.

Not only will member states lose their vetoes in more than 60 areas, the treaty makes it far more difficult for them to block legislation, as the threshold is reduced from approximately 74 per cent of votes to 55 per cent of members. That means that even if 11 of the 27 member states agree, they will be unable to block legislation.

I asked Labour members whether there were differences between the constitution and the treaty, and was not given a response. We were promised a referendum on the constitution. The treaty is almost identical to it, so we should get a referendum on the treaty.

16:15

**Gil Paterson (West of Scotland) (SNP):** Last week, the European and External Relations Committee visited Brussels, where I was struck by the dedication, enthusiasm and professionalism of our representatives. They are closely engaged with a range of subjects, including the treaty, but they have a very difficult task because, in Europe, it is Governments that lobby Governments and European institutions and that horse-trade with one another. We, in turn, lobby the lobbyists. Because we have nothing with which to trade, we have had little or no influence on the treaty. The tugging of coat tails in which we indulge should stop, and soon. Any rational person who visited Brussels and understood how the system works would support Scottish independence.

I want to discuss two aspects of the treaty: the measures it contains and how it should be ratified. I have no doubt that cross-border measures in general—not just those in the treaty—need to be tidied up. Throughout Europe, we should co-operate on crime, terrorism, people trafficking, drugs and rendition flights—the list could go on all day—because we have much in common on which we should join hands and support one another. However, Scottish red lines are not the same as UK red lines: our needs, priorities and interests are different.

Talking quietly to people during the visit made clear to me that no one in Brussels at any level is under the illusion that the treaty is not the same as the constitution; I could not find one person who did not think that. Angela Merkel has been telling the Germans that everything is the same, so people should not worry. Gordon Brown, by



contrast, has been telling everyone in the UK that everything has changed, so they should not worry. That is to forget that he and the Labour Party promised that there would be a referendum.

The public see through what Gordon Brown is saying. Unfortunately for all members, no matter what party they belong to, it is the body politic that suffers. If we wish to retain the trust of the people, we should not make promises that we do not intend to keep. We talk aggressively about how we can engage the public and get people out to vote. We have creative ideas, but public trust is lost in one fell swoop when such a promise is broken. When we, collectively, do that, we leave the public behind, as they feel cheated. Regardless of whether members are for or against the new treaty, they should trust the people and give them their say. Mr Brown should keep his promises and hold a referendum.

16:19

**Helen Eadie (Dunfermline East) (Lab):** I look forward to working with the minister, Linda Fabiani, and her colleagues in all the areas on which we agree. In those areas on which we differ, I trust that she will accept that we must be at crossed swords. I am happy to stand up for Scotland in partnership with Linda Fabiani when she is constructive on behalf of the people of Scotland.

I have trawled through the countless pages of information that are available to us and, in answer to some of the points that have been made about the difference between the reform treaty and the constitutional treaty, I can say that it is clear that a lot has been left out. Out has come automatic qualified majority voting for policing and judicial co-operation in criminal matters, out has come any suggestion of a binding charter of fundamental rights, out has come the weak emergency brake on social security measures and out has come possible communal decision making for foreign and defence policy. Those are important areas. However, in addition, all the symbols that suggest a supra-national power have come out of the old, proposed constitution.

For the sake of clarity, I want to say that my Westminster colleague, Gordon Brown, whose constituency I and Marilyn Livingstone have the honour and privilege to share, has said all along that he believes in a hard-headed pro-Europeanism because he recognises that we become stronger by co-operating with our partners in the European Union to meet the shared challenges of globalisation and climate change but that we must have the confidence to put our national interest first and sometimes say no and argue our case when we believe that Europe risks taking the wrong course.

Gordon Brown has also said that, to win the argument for reform in Europe and effective British engagement in Europe, Britain must break out of the outdated debate over Europe that has dogged British policy for decades.

It is important to highlight another thing that Gordon Brown has said. A biography of Gordon Brown talked about

"Brown's previously expressed dislike of excessive EU 'federalism' and supranational integration"

and said that

"he has argued that the federal ambitions of the EU's founders are no longer adequate in the current globalized world—the old assumptions about federalism do not match the realities of our time—and that the EU should develop along intergovernmental lines, according to what he refers to as 'pro-European realism', emphasizing cooperation between national states."

Gordon Brown is driving at the point that it is important to move away from the sterile arguments about structures and how we function within the EU and that we must tackle the issues of Africa and all the other places. I therefore hope that, if members take anything from this chamber today, it is that everyone in and outwith this chamber—I am making the same plea to the churches, trade unions and everyone else—should join me in saying that we do not want to see Robert Mugabe at the IGC in Portugal on 18 October. We must light a candle on behalf of everyone in Scotland to say that we want the people of Zimbabwe to be looked after, that we want their democratic rights to be restored and that we do not want the dreadful situation that exists in Zimbabwe to continue.

16:23

**Jim Hume (South of Scotland) (LD):** I hope that I do not go off at too much of a tangent.

Much has been said about the need for reform of the European treaty. It is fair to say that reform is long overdue. From my perspective as the Liberal Democrat spokesman for the environment and as an ordinary MSP, I want to address the issues of climate change and fisheries.

The reform treaty has agreements on climate change and the fight against global warming, which have been added as targets for the European Union, and several provisions of the treaties have been amended to include solidarity in matters of energy supply and changes to energy policy in the European Union. Membership of the EU is therefore vital to the protection of our environment.

Most people will agree that the biggest issue facing us is climate change—the debate on which the Liberal Democrats have long led. Although it is not perfect, the carbon emissions trading scheme

is a model for other parts of the world—and one of the first things we need to do is strengthen it. If we expect Europe to take a leading role in climate change, we must get on with reforming its policies and institutions.

I should thank Mr Lochhead, who is absent from the chamber, for his response to me this morning on the EU fisheries fund. However—I realise that I am going off at a slight tangent—I am still concerned that Eyemouth and the Berwickshire coast in my region should be designated fisheries dependent areas. The Government's manifesto states:

"The failure of successive UK Conservative and Labour governments ... to adequately represent or protect the interests of our fishing industry is one of the biggest failings of the current constitutional settlement."

I do not stand alone in saying that giving Eyemouth and the Berwickshire coast fisheries dependent area status would represent a very large step towards affirming the Government's real commitment to the fishing industry in my part of the world.

Many people would appreciate answers to a number of questions. First, is this Government actively campaigning to scrap what it has referred to as the "disastrous" common fisheries policy at the European Council table? With that in mind, I wonder whether the Cabinet Secretary for Rural Affairs and the Environment is—as his MEP colleague called for—attending every European Council meeting.

**Bruce Crawford:** On the question of ministers attending important meetings outwith Scotland, will the member give a commitment that the Liberal Democrats will allow some form of absence management to be arranged so that that can happen?

**Jim Hume:** If the minister had done the same, maybe we, too, would have done so.

I also wonder whether the Government will implement the 10-point plan on fisheries that it advocated only nine months ago. [*Interruption.*] Behave yourself, Bruce.

The draft EU constitution did not propose any changes to competence over fisheries or to the conservation of marine biological resources under the common fisheries policy. Does the Government still hold the same position on exclusive and shared competence on fishing?

Marine conservation has always been an exclusive competence of the EU. If the treaty notes the continuing state of the competence on fishing, will the Government still refuse to support the treaty's ratification in the UK?

At my party's conference in Brighton, the president of the European Commission stated

quite clearly that no one questions either the need for reform or the idea that EU institutions must become more efficient, more effective and more accountable. As Malcolm Chisholm and George Foulkes have already pointed out, the commissioner with responsibility for fisheries, Joe Borg, has made clear his view that an independent Scotland would have to reapply to become an EU member. Moreover, the French have decided that a nationwide referendum must be held before any new members are allowed into the EU. Do we really want to put an independent Scotland's membership into the hands of the French people? I doubt it.

By modernising the Commission, we are allowing more effective decision making in the Council and ensuring the transformation of democracy. It is not about giving the European Parliament a more substantial role but about giving all Parliaments a greater say.

16:28

**Christina McKelvie (Central Scotland) (SNP):**

I was shocked by the remark, which was made earlier this week at the Liberal Democrat conference, that people who want a referendum on any forthcoming EU treaty are "headbangers". I hope that the Liberal Democrats in the chamber will distance themselves from such a comment and reaffirm that people who want to vote for their preferred option in a referendum are simply democrats. I would hate to think that any of my colleagues would seek to deny Scots the opportunity to vote in a referendum—indeed, that would be most unfortunate, would it not?

I hope that the Liberal Democrats agree that referendums are, in general, good things and should be supported, and that if we brought a bill to the chamber that called for a referendum, it would have their support. Of course, that referendum would have to be on an issue that covered substantial constitutional matters.

I was interested in Menzies Campbell's suggestion that the reform treaty does not need a referendum as it now represents a minor treaty rather than a major one. In this as in many other matters, I am not sure that his reasoning is sound, but I find it interesting that he has called for a referendum on our membership of the EU as a whole because he wants an honest debate. Leaving aside his obvious addiction to referendums, I agree with Sir Menzies Campbell that, on issues of national importance, we should have an honest debate, followed by a referendum.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Although I am delighted to hear that our party conference in Brighton has such an avid viewer—and that the viewing figures have

obviously gone up—will the SNP member state whether, in her view, the treaty is good or bad for Scotland? Would she support having a referendum on the treaty that we are debating? Although the treaty has yet to be ratified, it has been agreed by Governments and cannot be amended.

**Christina McKelvie:** I would not vote on anything that I had not seen. I cannot answer the member's question until I have seen the text.

Perhaps we should have a national conversation as an honest debate, to be followed by a referendum on Scotland's constitutional position. I hear that that conversation has started and that everyone is welcome to join in. It is important, though, that no one prejudges the European treaty and that the debate takes place in an informed manner. We need to have an informed conversation before we vote. I hope that Ming Campbell will follow the fine example of the Scottish Government, which is waiting to see the treaty before it takes any decisions on it. We have seen the draft, but there is still a long way to go.

Belgium has failed to form a Government within 100 days. It should look at Scotland to see what can be done in 100 days. It looks as though Flanders and Wallonia might be preparing to go their separate ways in the near future. Both will become members of the EU, of course, and will have to be signatories to any new treaty. That news should delight those who worry, fret and lose sleep over Scotland's entry to the EU when we become independent.

The treaty tidies up some of the EU's internal operations. My Conservative colleagues in the blue corner will be delighted to know that the treaty will introduce an exit clause. Personally, I want Scotland to be at the heart of Europe, operating in the international arena with all the va-va-voom that we have seen from Scotland's Government and, indeed, Scotland's football team in the past few months.

I invite all colleagues, especially the Lib Dems, to join in the conversation on Scotland's future in Europe, which is being so ably conducted by the Minister for Europe, External Affairs and Culture. It is only when we engage properly in the debate that we begin to see the possibilities opening up. Not only would the Lib Dems' engagement in the debate contribute to the conversation, they might actually enjoy it and derive some benefit from it. I am sure that it will be no surprise to hear that I support the Government on the issue.

16:32

**Margo MacDonald (Lothians) (Ind):** Quelle surprise!

I pay tribute to Gil Paterson's speech, which was on the money. It was also full of humanity and understanding of the place of people in the great European Union. I agree with Keith Brown that we must work as team Scotland in Europe because, as Gil Paterson rightly said, an awful lot of Europeans do not have a clue about who or where we are.

At yesterday's meeting of the European and External Relations Committee, a couple of members said what a terrific reputation Scotland has in Europe. Well, it is better now after James McFadden's goal. He probably did a great deal more than many of the lobbyists have done over the years.

That indicates part of the answer to George Foulkes's question about whether we can imagine Spain saying yes to Scottish independence. I seem to remember Canon Wright asking a similar sort of question about what would happen if England said no. We decided that it did not really matter a hoot if England said no if we said yes. If the intention is clear, we will make it, but we will have to get deep down and dirty, and get into realpolitik, with other European nations—I would welcome that.

A word has come up in this debate that we did not hear at all at yesterday's European and External Relations Committee meeting—subsidiarity. That was supposed to be the essence of the European Union. All decisions were to be taken at national or local level, and only those that could not be taken there would be taken at European level. That position is somewhat at odds with the comment of Guy Verhofstadt, the Belgian Prime Minister, that the European Union has acquired all the instruments of a federal state and that the capstone is the constitutional treaty. Nicolas Sarkozy, the new French President, said that the project of the founding fathers is complete and that the economic union is becoming a political union. Romano Prodi himself said that the constitution represents a big change from the basic concept of nation states and that it has changed centuries of history.

While we sit here talking to ourselves about what we think about Europe, they are in Europe and running it. I would like to put their ideas and ours to the test, which is why Ming Campbell is right: why not have a contemporary referendum? When the Berlin wall came down, it changed the European Union's potential and its parameters, but we have never properly talked about that. I would be willing to do that. Indeed, I would welcome that discussion. We would then see whether the reform treaty offers Scotland a distinctive place or whether we should oppose the treaty.

**Helen Eadie:** Does Ms MacDonald agree that rather than spend our time and energy debating whether we are in or out of Europe—an issue that was settled in a referendum in 1975—we should spend our time and energy ensuring that the standards that have been set by the EU on matters like—

**The Deputy Presiding Officer:** Quickly, please.

**Helen Eadie:** Last week, a BBC programme on children's homes addressed—

**The Deputy Presiding Officer:** Margo MacDonald, you have 30 seconds in which to finish.

**Margo MacDonald:** I will answer Helen Eadie, because her question went right to the heart of the matter. We do not need to go to Europe to decide what to do about children's homes—

**Helen Eadie:** We do if we are concerned about children's homes in Bulgaria—

**The Deputy Presiding Officer:** Order.

**Margo MacDonald:** Communities in Europe differ hugely in their social and cultural history and contemporary life. They should determine such issues for themselves. That takes us right to the heart of the matter, and it is why I am uncomfortable about the step towards political union that the leaders of Europe have proposed, and why I would welcome a referendum. I do not know why the Scottish National Party is running scared on the issue.

16:36

**Christopher Harvie (Mid Scotland and Fife) (SNP):** For the past 27 years, until May this year, I lived and worked in the heart of Europe. Rather like Molière's Monsieur Jourdain, I was speaking Europrose—which is really very boring—without understanding that I was doing so.

My return to these islands was something of a revelation. We are supposed to be the people who have the conventions and the eloquence that make political institutions work. In Scotland, in particular, we invented the European Union. The first proposals for a union came from an Edinburgh professor, Professor Lorimer, in 1884. David Edward and Judge Mackenzie-Stuart in the European Court of Justice added considerably to the flesh of European institutions, and in the 1980s Scotland convinced the father of Europe, Emile Noël, secretary general of the EU, that it could join the EU without having to open negotiations on its own, as that minor figure, Commissioner Borg, has suggested it would have to do.

The European Union is surely in an awkward phase. We must realise that we are witnessing a two-speed Europe and the re-emergence of a

European core. That core includes the non-EU state of Switzerland as much as it includes the non-EU state of Norway. We are in a position of manoeuvre in Europe and we must make that a major priority.

Core Europe gets together quickly and rapidly. In a weekend when it took me three and a half hours to travel from Cologne to the English frontier, it subsequently took me seven and a half hours—the speed of a steam train—to get from London to Edinburgh, because of the deterioration of the British transportation system. In core Europe, frontiers are vanishing, and when the alpine tunnels open, northern Italy will be part of that core.

British opinion about Europe is directed by Europe's worst press, owned by Richard Desmond, Conrad Black—he might already be in prison—Rupert Murdoch and the mysterious Barclay brothers.

Of course, Gordon Brown must make up certain credibility gaps. In an article on him in *The Guardian* in 2003, Andy Beckett wrote:

"Anyone suggesting European or German precedents or organisations would be regarded as mad."

Such a view from London does not give cause for optimism for the future.

**George Foulkes:** If we are talking about contradictions, my recollection is that in 1975 the SNP opposed Britain's membership of the EU, but Chris Harvie supported it, because he was a member of the Labour Party at the time.

**Christopher Harvie:** The bulk of the Labour Party was opposed to entry into Europe in the 1975 referendum.

European state building is going on, as Ted Brocklebank points out. It is predominantly a Franco-German business—it is impossible to perceive the frontier between France and Germany. However, there is room for small states that have particular resources to sell and particular manoeuvrability, which is where Scotland's future lies.

I return to Lorimer, who said more than a century ago:

"When rational men cross the frontiers of their separate states, must they of necessity leave their wits behind them and, in all their more important relations, revert to the condition of savages or sink to that of fools?"

That is a fair description of a number of leaders and opinion-formers south of the border.

We know what we have to avoid. A two-speed Europe is inevitable, but we must have a Government that takes the initiative.

**The Deputy Presiding Officer:** We move to wind-up speeches.

16:40

**Liam McArthur (Orkney) (LD):** The debate has been timely, welcome and, as George Foulkes said, competent. There is little dispute in the chamber that Scotland benefits enormously—economically, socially, culturally and environmentally—from our membership of and full participation in the European Union. On the whole, members' contributions have been constructive, although I shuddered at the spectre of a young, thrusting David McLetchie rampaging through the streets of Edinburgh.

As my colleague Robert Brown pointed out, it is not good enough for the SNP Government to say that it has simply facilitated the debate. At this stage, the Government needs to give us a clearer steer on its priorities for and attitude towards the treaty. As Malcolm Chisholm made clear, sources close to the First Minister have intimated that the Government has yet to take a view on whether to press for a referendum and, if so, whether it will campaign for a no vote. That is not good enough.

I am not saying that no decisions have been made. On reading the *Official Report* of yesterday's meeting of the European and External Relations Committee, I noted that Ian Hudghton and Alex Neil agreed that they welcome the proposed revisions to the treaty, because the revisions steer clear of what Alex Neil called the "froth and cosmetics" of national anthems and flags. I could not agree more, although I thought the sentiment an odd one for nationalist politicians to express. I assume that such froth and cosmetics are distinct from the froth and cosmetics of changing the Government's official letterhead.

The unclogging of the works of the EU is not an academic exercise that is of interest solely to constitutional lawyers. It offers us the opportunity to make the European Union a more effective and representative entity. I subscribe to the view that we must continue to build the team Scotland approach. All the major policy challenges that we face—climate change, energy security, crime and terrorism—require concerted and collective action on a European basis, which will happen only if the European Union undergoes necessary reform. However, allowing the directly elected European Parliament to take a more substantive role and, importantly, giving national Parliaments a greater say in the decision-making process are necessary and welcome consequences of such reform.

Of course, as we have heard again in the chamber today, there are those who insist that legitimacy of reform can be secured only through a referendum, but I disagree—Irene Oldfather set out well the precedents for that view.

A range of issues was covered in the debate, but fisheries figured more than most. I remain

slightly confused about the SNP's position on the CFP. When it was in opposition, we were told that a full-scale withdrawal would take place, albeit not during the already packed 100 days. Indeed, at one point, the SNP and the Tories were engaged in an unseemly rush to see who could get to the exit door first. Ted Brocklebank, or at least his UK leader, and Richard Lochhead now appear to acknowledge that full-scale withdrawal from the CFP would be illegal—unless, of course, the plan is to withdraw entirely from the EU.

I echo the call that Robert Brown and others made for the minister, in responding to the debate, to clarify why the Government's position on the vital issue of EU treaty reform is still fairly patchy. It is all very well for the First Minister to try to take credit for Scotland's excellent football results—as Christina McKelvie also did today—but it would be helpful if Mr Salmond and his colleagues took a little more responsibility for setting out the Government's approach to EU treaty reform.

16:43

**David McLetchie (Edinburgh Pentlands) (Con):** Although I would have liked to hear more from Christopher Harvie and to wallow in nostalgia a little longer with George Foulkes, it was inevitable that the main focus of the debate was the similarities between the treaty and the EU constitution and whether there should be a UK-wide referendum on the treaty's adoption.

In that context, I take as my guide the American writer and poet James Whitcomb Riley, who coined the expression, "If it walks like a duck, looks like a duck and quacks like a duck, I would call it a duck." In short, an object is classified not by its label but by its characteristics. In the context of the European Union treaty, that means that if it works like a constitution, looks like a constitution and talks like a constitution, it is a constitution.

As we have heard, the duck test has been applied to the treaty by several European leaders, who have come to exactly the same conclusion. Bertie Ahern says that 90 per cent of the proposed constitution is still present. The Spanish Prime Minister has said:

"We have not let a ... substantial point of the constitutional treaty go."

Angela Merkel, the German Chancellor, has proclaimed:

"The substance of the constitution is preserved. That is a fact."

Valéry Giscard d'Estaing and others who have been referred to during the debate have made similar points.

There we have it. Accordingly, there should be no room for argument, but that, of course, is not

the case, because our Prime Minister, Gordon Brown, is now ducking the duck test. With a total lack of conviction, and despite being undermined by the comments of other European leaders, he maintains that Labour's pledge to hold a referendum miraculously does not apply to the treaty, thanks to the sleight of hand of the army of European lawyers who have been enlisted to ensure that form triumphs over substance.

Although there are some honourable exceptions among Labour members of Parliament, it appears that Labour at Westminster is running away from a referendum on the treaty and that Labour members of the Scottish Parliament are running with it.

**George Foulkes:** Will the member take an intervention?

**David McLetchie:** Sorry, but I have finished with Labour and I am going on to the Liberal Democrats now.

Trust the Liberal Democrats to confuse the issue. I suppose that there is no more confused person than Sir Menzies Campbell. He says that we should have a referendum on whether to remain a member of the European Union. However, Ted Brocklebank and my old boss George Foulkes pointed out that we had a referendum on that question in 1975 and people voted decisively to stay in the European Union. That is desperate stuff from the Liberal Democrats but, thankfully, the Scots tongue has an excellent word to describe such a policy—mingin. I hear Alex Salmond suggesting shoogly, which is pretty good as well.

At the most recent general election, the three main UK parties promised a referendum on the proposed constitution. At that time, there was an overwhelming parliamentary majority for such a referendum. Had the French and the Dutch not rejected the constitution, we would have had a referendum by now. However, the Labour Government and the Liberal Democrats apparently want to renege on those promises. That is not acceptable, and we should say so. I believe firmly that the proposed European Union treaty will lead to a further accretion of powers to the European Union at the expense of this Parliament and Scotland's other Parliament at Westminster. That is not acceptable, and we in the Parliament should say so loud and clear.

16:47

**Malcolm Chisholm:** As predicted, most of the Tory speeches were about a referendum, although the standard of the arguments left a bit to be desired. The talk of the duck test sums up the matter. In form and substance, the proposed treaty will be a traditional amending treaty and will

involve far less transfer of powers than any of the four previous European treaties, particularly the Maastricht treaty and the Single European Act, which were passed under the previous Conservative Government. However, Ted Brocklebank helpfully reminded us that the Prime Minister is against building a European superstate. The Labour Party is totally against such a state, which is why we support the proposed modest and evolutionary reforming treaty.

Ted Brocklebank repeated the scare stories about the proposed high representative for foreign affairs, but he omitted to say that he or she will express a view only when it has been agreed unanimously by the European Union foreign ministers. He also talked a lot about the proposed president of the European Council, but omitted to say that he or she will have no executive powers. Indeed, the Commission opposed the idea, because it will increase the powers of the Council of Ministers.

As anticipated, we have heard a lot about the 90 per cent test. As someone said, humans and mice are 90 per cent identical genetically, but the other 10 per cent is rather significant. That apart, we should remember that the proposed treaty is different. Some people may not be happy about the specific arrangements that the UK Government has negotiated, but the President of the European Parliament has said:

"Since making the Charter legally binding and extending Community competence to"

justice and home affairs

"were two of the most important features of the original constitution, the deal struck by Tony Blair in June means that—for better or worse—much of its substance will simply not apply in Britain."

The truth is that, to quote Kenneth Clarke, the Eurosceptics in the Tory party would have

"demanded a referendum just about the date on the top of the piece of paper".

It is sad that David McLetchie, after his yes campaigning in 1975, has descended to that.

**David McLetchie:** The member voted no.

**Malcolm Chisholm:** I say for Christopher Harvie's and David McLetchie's benefit that I voted yes in 1975.

Margo MacDonald was concerned about qualified majority voting, as were the Tories. The extensions that apply to the UK are modest but sensible. For example, future decisions on emergency humanitarian aid to third countries will be taken in that way. The extensions are limited in comparison with Baroness Thatcher's Single European Act, which was the biggest move to qualified majority voting in the history of Europe. I reassure Margo MacDonald that there is a triple

lock on any extensions of qualified majority voting, comprising the Council of Ministers, national Parliaments and the European Parliament. Any of those can object to an extension. Linda Fabiani omitted to mention the third part of the lock.

On the subsidiarity point that Margo MacDonald raised, there will be new procedures for national Parliaments to object to proposed laws on grounds of subsidiarity, and enhanced opportunities for national Parliaments to feed into legislation at an early stage. That is an opportunity for us as well.

**Margo MacDonald:** Does the shadow minister accept that there are a great number of activists and lawyers in Europe who believe that every one of those triple locks can be challenged under European legislation?

**Malcolm Chisholm:** The European treaty will be European legislation.

**The Deputy Presiding Officer:** One minute.

**Malcolm Chisholm:** I have one minute left for the SNP, which should not be difficult. Christina McKelvie said that she supports the Scottish Government's position, but we still do not know what that is. The only thing that is clear is that having exclusive competence in marine conservation is a red-line issue, but, as Irene Oldfather said, and as I said in my opening speech, that is the position at the moment, so what is the point in demanding a referendum? If it is rejected, we will still have exclusive competence over marine conservation.

We must have some answers from the Government in the summing-up speech. What is its position on withdrawal from the common fisheries policy? What is its position on the treaty? We have a draft of the treaty, which presumably the Government has read. Does it like the draft, apart from the one line about the extension of exclusive competence in marine conservation? Does it support a referendum? If so, how would it vote? Linda Fabiani said even less in the chamber today than she did at the European and External Relations Committee yesterday, so I hope that whoever is summing up will fill in the gaps.

16:52

**The Minister for Parliamentary Business (Bruce Crawford):** The difference of views expressed about the European Union this afternoon and the wide range of issues with which Europe is involved perhaps explain why so many of the communications from Brussels do not make for easy decision making. Many members have focused on fisheries, which is an issue that the Government takes extremely seriously. I therefore make no apology for reiterating our position so that it is absolutely clear.

We have consistently expressed our opposition to any treaty—whether constitutional or reform—that entrenches exclusive competence for the conservation of marine biological resources under the common fisheries policy. Instead, we believe that competence over the conservation of marine resources should be returned to coastal states, repealing that part of the EU's fisheries policy. We have made the Government's position clear to the UK Government. The First Minister has written to the Foreign Secretary setting out those aspects of the prospective treaty that are of particular concern to us and he has today written to Geoff Hoon, the UK Government's chief whip. Also, Linda Fabiani will be taking up the matter again at the next meeting of the joint ministerial committee on Europe, which will meet in advance of the October intergovernmental conference to consider the UK's lines for the conference.

Those members who have called on the Government to express a view now about whether a referendum should be held on the treaty are getting way ahead of themselves. The timescale for the IGC is a demanding one, but the mandate that was given to it is fairly clear. The intention is for a text to be agreed by mid-October. That text will be formally signed off by the European Council in December. After that, the ratification process will commence in the member states. The Parliament should—and, in due course, will—express its opinion on the content of the treaty and the process for ratifying it.

**Irene Oldfather:** Given that, as the minister has explained, the timescale for agreeing the reform treaty is so tight, why did the SNP not raise exclusive competence over marine conservation at the last JMC on Europe if it is a red-line issue?

**Bruce Crawford:** As usual, Irene Oldfather is off the ball. I have already explained on three occasions when we have raised that issue and taken the argument straight to the heart of government. As usual, she is also premature, because we should not look at the content of the treaty before it is finally determined. To do otherwise is to give up on Scotland and to say that we cannot secure any more changes and have thrown in the towel, just as the Liberals have done in this regard.

Keith Brown put forward a considered opinion and put Irene Oldfather and Robert Brown in their place. It is only when the final treaty is available that we will be able to say what it contains. Whatever the outcome of the IGC and the ratification process, the Government will continue to protect Scotland's interests by engaging positively with the EU institutions. However, to take no account of what is going on would be foolish. Who knows how other countries' Governments might act or behave in last-minute

attempts to make amendments? With an EU of 27 members, it is much more difficult to make firm predictions. The Government wants to inform Parliament and the Scottish people about the process and about our input into it, but it is also appropriate to listen to others' opinions about the issues that are at stake and the principles that are relevant. It would be surprising indeed if any party in the Parliament were to ask for less or expect more. The text is not dry on the treaty, and we will fight Scotland's corner all the way until it is.

It is in our interest to work with other EU countries to tackle the big problems, such as international crime and terrorism. Such co-operation has brought benefits in recent years. For example, it was thanks to the European arrest warrant that the UK obtained the rapid extradition of one of the 21 July bombing suspects.

Jim Hume, Malcolm Chisholm and George Foulkes questioned whether an independent Scotland would be in the EU. George Foulkes tried to quote inaccurately from what Robin Cook said. He actually said on the BBC in July 2000:

"It's in the nature of the European Union, it welcomes all-comers and Scotland would be a member."

Other eminent people in the European Union—such as Emile Noël, the first and longest-serving secretary general of the European Commission, and Eamonn Gallagher, the former director general of the European Commission and European Community ambassador to the United Nations in New York—have made those points. Indeed, Gallagher said on 18 February:

"Scotland and the remainder of the UK would be equally entitled ... to continue the existing full membership of the EU."

That puts that argument neatly to rest.

We believe that fishing is a vital national interest for Scotland and Scottish people. Sustainable fishing communities are a vital part of a successful future for rural communities in Scotland. That is why we are profoundly opposed to the inclusion of the conservation of marine biological resources under the CFP as an exclusive competence of the Union.

We want to wait and see what comes out of the IGC, but we are clear that entrenching the common fisheries policy is a red line for us. That is what standing up for Scotland is all about, and that is why we are the Government of Scotland.

## Business Motion

**The Presiding Officer (Alex Fergusson):** The next item is consideration of business motion S3M-493, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 26 September 2007

2.30 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Ministerial Statement: Enterprise Networks
<i>followed by</i>	Scottish Government Debate: Housing
<i>followed by</i>	Business Motion
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 27 September 2007

9.15 am	Parliamentary Bureau Motions
<i>followed by</i>	Scottish Liberal Democrats Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time— Finance and Sustainable Growth; Justice and Law Officers
2.55 pm	Ministerial Statement: Rail Links to Edinburgh Airport
<i>followed by</i>	Ministerial Statement: Broadcasting
<i>followed by</i>	Procedures Committee Debate: 1st Report 2007 (Session 3), Merging the Procedures Committee and the Standards and Public Appointments Committee
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Wednesday 3 October 2007

2.30 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Scottish Government Business
<i>followed by</i>	Business Motion
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 4 October 2007

9.15 am	Parliamentary Bureau Motions
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<i>followed by</i>	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Education and Lifelong Learning; Europe, External Affairs and Culture
2.55 pm	Scottish Government Business
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i> <i>Crawford.]</i>	Members' Business—[ <i>Bruce</i>

16:59

**Robert Brown (Glasgow) (LD):** I will not oppose the business motion this afternoon, but I want to raise a matter that I raised in the Parliamentary Bureau.

Next week there will be important ministerial statements on the enterprise networks, on the Edinburgh airport rail link and on broadcasting. I will put to one side broadcasting, which was grandstanded by the First Minister over the summer recess rather than being reported first to Parliament, as I understand that there will be a debate on the matter in due course.

The other two issues raise vital matters for the Scottish economy and for the relationship between the Parliament and the Executive, but as yet we have no undertaking from the Minister for Parliamentary Business to have a debate on either of them. Attention at the Parliamentary Bureau was focused on EARL, to which I will return, but I will first ask the minister specifically whether he proposes to schedule a debate on the future of the Scottish enterprise networks before the October recess.

I raised the other matter, EARL, at the Parliamentary Bureau and it was the subject of an extensive exchange. I acknowledge that the minister reluctantly agreed, without making a commitment on the issue, to come back to the bureau on the matter next week. I want to put on the record today the view of the Liberal Democrats that the importance of the issue and the uncertainty that surrounds it are such that there requires to be a parliamentary debate on it—preferably next week but certainly before the October recess.

**Jackie Baillie (Dumbarton) (Lab):** I entirely support the comments of my colleague Robert Brown. Like Robert Brown, I indicate that we will not oppose the business motion. However, I invite the Presiding Officer to take a wider look at the use of ministerial statements, including consideration of the circumstances when debates may be more appropriate than ministerial

statements, the conventions about the timing of providing statements to Opposition spokespeople and the briefing of the press in advance of such statements.

**Robert Brown:** I am grateful to Jackie Baillie for her comments, with which I agree—particularly given that, unlike the First Minister, she does not make them from a sedentary position. Members will be aware that there was a ministerial statement followed by a debate on the issue in June, following which the Government proposals were roundly defeated by Parliament. To his credit, the Cabinet Secretary for Finance and Sustainable Growth made a gracious climbdown and undertook to come back to Parliament in the autumn. I must confess that it never crossed my mind that the Scottish National Party would try to avoid a further parliamentary debate on the issue. EARL manifestly cannot stay in the position in which it is now in. Work has stopped and a cloud of uncertainty surrounds EARL. Delay will cause cost rises. Subject to the governance issues that were noted by the Auditor General for Scotland being resolved, it was the clear wish of Parliament to proceed with it. [*Interruption.*]

**The Presiding Officer:** Order.

**Robert Brown:** The minister will no doubt advise us that the Executive is bending over backwards to oblige Parliament—it is not. The Executive is clearly set on doing all that it can to frustrate Parliament. If the minister is not able to give an assurance today that there will be a debate on EARL before the recess, I put him on notice that the Liberal Democrats will seek to amend the business motion for that purpose at the Parliamentary Bureau next Tuesday and, if necessary, in the chamber.

17:03

**The Minister for Parliamentary Business (Bruce Crawford):** I will deal with the points of issue but not with some of the spurious points that Robert Brown raised. I am somewhat surprised to be yet again standing in Parliament responding to an issue relating to the Parliamentary Bureau business motion.

Robert Brown has raised a couple of issues. With regard to the request for a debate on the rail link to Edinburgh airport, the Presiding Officer will be aware that there was a lengthy discussion at the bureau meeting on Tuesday and that a collective decision was reached. I stand by the commitment that I made at the bureau and I will bring the matter back next week when an item will properly be put on the agenda to enable discussion and debate of the issue. The request for a debate on the enterprise networks raises an entirely new issue that was not raised at the

bureau meeting, which is the rightful place to raise such concerns.

I remind Robert Brown and Jackie Baillie that a business motion is not a Government motion but a Parliamentary Bureau motion, which is agreed by all business managers. I seek the Presiding Officer's guidance on the points raised by Robert Brown.

**The Presiding Officer:** I thank the minister for that response.

I confirm that Parliamentary Bureau motions are a collective responsibility. I also confirm that any bureau member has the absolute right to challenge business motions. However, I take the opportunity to stress that if business managers intend to raise issues when a business motion is moved, I would expect them to have made their position clear when the draft motion was being discussed at the bureau meeting.

I have made it clear in the past that I take the release of statements to the press very seriously, because that calls into question the integrity of Parliament. I will continue to monitor the situation carefully. Members are not slow to make me aware when they have concerns on these issues. This is a subject in which I take a close interest and, as I said, I will continue to monitor the situation.

**Margaret Curran (Glasgow Baillieston) (Lab):** On a point of order, Presiding Officer. On behalf of those of us who are not members of the bureau, I wish you to reassert the primacy of Parliament on these issues. [*Interruption.*] I think that I am entitled to be heard in silence, Presiding Officer—you often ask me to listen to others in silence and, as you know, I always acknowledge that.

**The Presiding Officer:** Please continue to make your point.

**Margaret Curran:** The point that I am making is vital. As a previous Minister for Parliamentary Business, I acknowledged in my work in the bureau that primacy lies with the Parliament and that every single member of it has the right to raise their concerns in the chamber. Matters can emerge and it is vital that the Parliament hears all the issues. The bureau does not have special privileges over the Parliament.

**The Presiding Officer:** I am not aware that the primacy of the Parliament is being called into question in any shape or form. I said that I would expect business managers to raise issues to do with the business motion in the bureau, which is where they rightfully belong.

**Robert Brown:** On a point of order, Presiding Officer. Do you accept that I raised issues to do with EARL in the bureau? There was a lengthy debate about the matter. I have not opposed the

business motion today. I have laid some issues before the Parliament, so that members are aware of them, and I have given the Parliament, the bureau and you, Presiding Officer, notice of what the Liberal Democrat position will be if there is no movement on the matter by next Tuesday.

**The Presiding Officer:** You have clarified your position through your point of order and your contribution on the business motion. That is now clear to the Parliament. I believe that I have made clear my position. The fact is that the Minister for Parliamentary Business undertook to come back to the bureau next Tuesday with a possible timetable for the consideration of EARL.

**Margo MacDonald (Lothians) (Ind):** On a point of order, Presiding Officer. I would be obliged if you would clarify that after the bureau has reached a decision—to which, as I recall, a member of the bureau can record dissent—it is open to any member to challenge it or to seek more information on it when the matter comes to Parliament.

**The Presiding Officer:** Yes. I am happy to confirm that.

*Motion agreed to.*

That the Parliament agrees the following programme of business—

Wednesday 26 September 2007

2.30 pm	Time for Reflection
<i>followed by</i>	Parliamentary Bureau Motions
<i>followed by</i>	Ministerial Statement: Enterprise Networks
<i>followed by</i>	Scottish Government Debate: Housing
<i>followed by</i>	Business Motion
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business

Thursday 27 September 2007

9.15 am	Parliamentary Bureau Motions
<i>followed by</i>	Scottish Liberal Democrats Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time— Finance and Sustainable Growth; Justice and Law Officers
2.55 pm	Ministerial Statement: Rail Links to Edinburgh Airport
<i>followed by</i>	Ministerial Statement: Broadcasting
<i>followed by</i>	Procedures Committee Debate: 1st Report 2007 (Session 3), Merging the Procedures Committee and the Standards and Public Appointments Committee

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Wednesday 3 October 2007

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Scottish Government Business

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 4 October 2007

9.15 am Parliamentary Bureau Motions

*followed by* Scottish Government Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time  
Education and Lifelong Learning;  
Europe, External Affairs and Culture

2.55 pm Scottish Government Business

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

## Decision Time

**The Presiding Officer (Alex Fergusson):**  
There are no questions to be put as a result of today's business.

## Beaully Denny Public Inquiry

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S3M-97, in the name of Murdo Fraser, on the Beaully Denny public inquiry. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament is concerned about the conduct of the public inquiry into the proposed Beaully to Denny 400kV electricity transmission line; notes that there is a lack of confidence from many objectors in the current handling of the inquiry and that objectors have raised concerns with Inquiry Reporters but that these concerns have been dismissed; further notes with concern that many objectors' submissions have been ruled inadmissible; believes that serious issues are not being fully considered due to the strict adherence to the inquiry timetable, and further believes that the current conduct of the public inquiry will prevent a fully democratic inquiry and does nothing to reassure the 17,000 objectors that this is a fair process.

17:09

**Murdo Fraser (Mid Scotland and Fife) (Con):** I thank all members who have stayed for the debate and the members from all parties who signed my motion. I also thank the many individuals and groups who have travelled to the Parliament to watch the debate from the public gallery. Before I begin, it is appropriate for me to put on the record my thanks for all the hard work of individuals and groups, such as Scotland Before Pylons and the John Muir Trust, who have done so much to ensure that the voices of communities are heard. They have worked continuously on the public inquiry, and they have given up much time and resource to try to protect Scotland's landscape.

There is not enough time available this afternoon to raise all the concerns that have been expressed to me by objectors, but I will give some brief background. In July 2005, Scottish Hydro Electric Transmission Ltd and Scottish Power Transmission Ltd published the proposed route for a 400kV overhead electricity transmission line. The proposed line will replace the existing 132kV transmission line between Beaully, which is west of Inverness, and Denny, which is west of Falkirk. In September 2005, the developers submitted applications to the Scottish ministers to construct and operate the line. In August 2006, the Scottish ministers referred the application to a public inquiry. The inquiry began in February of this year, and it is hoped that the report of the inquiry will be submitted to ministers during the course of 2008 for a final decision. As is fairly well known, it is the largest public inquiry in Scotland's history.

The line in question cuts through four local authorities: Highland, Perth and Kinross, Stirling and Falkirk. All four councils have lodged

objections to the proposal. There has also been an objection from the Cairngorms National Park Authority, and a further objection from Clackmannanshire Council. In addition, 17,295 objections to the proposal were made to the then Scottish Executive.

The purpose of this debate is not to consider in detail the substantive arguments for or against the new line. There are real concerns relating to the proposed line—I am sure that other members will refer to them in the course of the debate—including concerns about potential health issues, the impact on the environment, the impact on the tourism industry and the impact on Scotland's world-famous heritage sites, such as the Wallace monument and Stirling castle. Roughly 60 per cent of the proposed route does not run along the existing line, and the new pylons would be roughly double the height of the existing ones, averaging 45 to 50 metres. We are holding a public inquiry in order to allow those concerns and views to be aired fully and fairly. That is the plan: to have full and open consideration of those issues.

My motion refers to concerns raised about the handling and the conduct of the public inquiry. Even before the inquiry began, it was something of a David versus Goliath contest. On one side, we have a multinational company with deep pockets, and on the other side we have community groups and charities that are stretched and find it difficult to fund expert advice against the legal and technical experts fielded by the applicants.

Evidence is being dismissed by the reporter, who states that it is inadmissible due to missed deadlines. After giving evidence, Professor Andrew Bain OBE, who is an economist and former visiting professor at the University of Glasgow, said:

"The reporters struck out some of the evidence I was giving on the grounds that it should have been submitted at an unreasonably early date – in fact, before I'd even seen the material I was commenting on. The effect of this is there has been no significant criticism of key evidence. I knew it was going to be difficult but the procedures they are adopting make it difficult for the truth to come out."

In addition, the evidence that the reporters are taking is not being fully examined because the reporters, for understandable reasons, are having to stick rigidly to the inquiry timetable. There is therefore little opportunity, in some cases, to investigate important evidence further.

Another problem with the inquiry is that it seems to presuppose that the power line is needed and that overhead transmission lines are the only way in which to transmit power from the Highlands to the rest of the United Kingdom. There is no real opportunity to question whether the power line is needed at all and no recourse fully to discuss alternatives such as undergrounding and subsea

transmission. The broader issues at stake are not being considered.

There is also concern about the treatment of people who are giving evidence. One individual stated:

"I have attended the public inquiry on approximately 5 days and have been shocked at the manner in which Scottish Hydro Electric's cross-examination of witnesses has been conducted. It has been both aggressive and demeaning in content and manner of delivery."

We have evidence being dismissed; evidence not being fully investigated; poor treatment of witnesses who give evidence; an assumption that the power line is needed regardless of whether that is the case; and no real chance to discuss alternatives. All that is fundamentally wrong.

The most powerful evidence on that comes from Sir Donald Miller, the chairman of Scottish Power from 1982 to 1992 and a respected Scottish industrialist. After giving evidence, he stated:

"Since there is no apparent concern by the Reporter to establish facts or to hear evidence that is not supportive of the Applicant's case it is difficult to avoid the conclusion that the whole exercise is a sham. Certainly the procedures are without precedent in my fifty years' experience of Public Inquiries and are totally inappropriate for a technical and complex subject such as that under consideration. The Reporter's arbitrary rulings as to the admissibility of evidence put witnesses in an impossible position and make a mockery of the Executive's stated objective of encouraging participation in the planning process."

That is the crux of the problem. After attending the public inquiry, many of the witnesses have no faith in it. I do not want to take a decision at the end of the process when it has lost the trust of those who have presented evidence to it.

I have a number of questions that the minister should address. First, is he satisfied with the current conduct of the public inquiry? What steps will the Scottish Government take to address the concerns that I and others have raised? Has there been a full consideration of alternative routes and methods of transmitting power? Is there a national strategy for the transmission of power and electricity across the country? How can the inquiry come to a fair conclusion if it does not consider all the issues?

With so much at stake, the public inquiry must be open and transparent so that all views and evidence can be aired and the public can be satisfied with its conclusions. This is a serious issue that will impact on Scotland for generations to come. The public inquiry must get it right.

17:17

**Roseanna Cunningham (Perth) (SNP):** I congratulate Murdo Fraser on securing the debate, and I associate myself with much of what he said.

There is a temptation to engage in arguments for and against the Beaulieu to Denny line itself. I have frequently expressed my concerns about the impact of the proposed pylons in my own constituency. They will replace an existing line, but they will replace the current pylons with pylons twice the size. The route through my constituency is via a designated tourist route—an area where a wind farm has already been rejected for a number of reasons connected with the fact that there is a tourist route.

However, as Murdo Fraser said, tonight's debate is not so much about the pros and cons of the proposal as about the efficacy of the inquiry process. The truth is that, almost from the start, the conduct of the inquiry has caused problems. Not all opinions have been canvassed. It has been characterised by continual challenges to what people can speak to, what is reasonable and appropriate to be raised, what is ruled out because it has already been dealt with and other such questions. All that is against a background of no record being kept of the evidence that has previously been led, which would allow people to see what issues have already been raised.

All that amounts to harassment of witnesses. I understand that it is not normal practice for an on-going record to be kept in such inquiries, but the conduct of this inquiry flags up some serious longer-term concerns about process. Murdo Fraser's motion mentions that there are some 17,000 objectors. That is a massive number of people and organisations objecting to the line, and is obviously why the inquiry is taking so long and moving throughout Scotland in the way that it is.

Despite that, the balance of power is woefully out of kilter, and we are beginning to see that set of chickens coming home to roost. The rules are making it hardly worth while going along. Indeed, I have come to the conclusion that there will be little point in my own attendance to give evidence. It has been almost impossible to work out in advance what will and will not be admissible. In those circumstances, it seems a colossal waste of time to try to imagine our way round the process, which is effectively what we have to do. That is hardly an acceptable position to be in.

The inquiry process may not be a matter for the minister; I am not clear whether he is in a position to respond on the process. However, I hope that he takes on board the deep dissatisfaction with the way in which the inquiry has proceeded. That dissatisfaction has been felt the length and breadth of Scotland, and it is particularly strong in my constituency. A degree of alienation has been engendered among individuals and groups, and that will continue if the process continues. I hope that the minister will take note of the concerns raised and will consider carefully how to address them.

17:20

**David Stewart (Highlands and Islands) (Lab):**

I, too, congratulate Murdo Fraser on his initiative in securing the debate. I also congratulate him on his excellent speech. It is always a pleasure to see a fellow Invernesian do well, and I wish him well for the future. He might expect me to say that, as an ex-member of the IRA. I add quickly that I mean Inverness royal academy.

This debate is not about whether we are for or against renewables in a simplistic sense; it is about listening to our local communities, about listening to campaigners—some of whom are in the public gallery today, and about listening to our local authorities and the national park body, which have objected to the 400kV overhead transmission line.

As a Highlands and Islands MSP, I have strong concerns about the proposal—especially as the line runs through the national park. My colleague Jimmy Gray, who is leader of the Labour group on Highland Council, suggested to me earlier today that the solution is to bury the lines under the A9, especially as there will be dualling. Indeed, there would be a double advantage, because we would not need any snow clearance during the winter months.

The wider debate concerns the important role that renewables play in our energy mix. We all know the context, but perhaps I will mention a few points. We all know that, for the first time in decades, the United Kingdom is now a net importer of oil and gas; we all know that it does not look like there will be any more nuclear build; and we all know that our existing nuclear plants need so-called life extensions—Hunterston B in 2012 and Torness in 2016. Renewables—wave, tidal, wind, solar and, of course, hydrogen—will all play a vital role in meeting our climate change targets.

Being realistic, I accept that some upgrading of transmission lines will be required in the long term. However, we must not forget the important role of microrenewable schemes—which, in effect, consume their own smoke. I am thinking, for example, of wind turbines for individual homes and of biomass combined heat and power for small communities.

Let me give members one current example. On Friday, I was at an excellent conference on the future of Dounreay. We discussed the important role of the Pentland firth tidal project, which could supply power for an oil rig decommissioning project at the former Dounreay site without the need for any upgrading of the grid.

There is nothing new in such ideas. In the early 1900s, Kinlochleven had an aluminium smelter that was powered by hydro power. It supplied power to the grid in winter and bought it back in

summer. Historians in the chamber will know about the Labour Secretary of State for Scotland Tom Johnston who, under Churchill, nationalised hydropower in the early 1940s. That provided poor Highlanders with electricity for the first time. However, even then—as I know from looking at the history books earlier today—people considered carefully the siting, location, design and build of dams, transmission towers and lines. People were sensitive to the role that such things would play in the economy.

I want to make a general point. It is extremely difficult for people who go to inquiries to try to cope with the mass of information that is put before them; but we also have to consider the fact that the companies who make submissions can pay for their contributions to the inquiry by increasing our electricity bills. To use Murdo Fraser's image, it is very much a David and Goliath situation.

The Highlands and Islands have built up a vital reputation as a film-friendly environment—an unspoiled landscape with growing potential for the lucrative film market. The granting of national park status was testimony to our unique status. Tourism will be at stake if this project goes ahead. Film locations will be affected. After all, who will film when there are giant pylons, double the size and seven times the volume of the present ones? I object to the proposal and think that no more should be said about it. We should object to the plans. I call for underground and undersea transmission, which would get around the problem. *[Interruption.]*

**The Deputy Presiding Officer:** I remind those in the public gallery that it is inappropriate to applaud.

17:25

**Elizabeth Smith (Mid Scotland and Fife)**

**(Con):** I rise to speak in this debate because I recognise the strength of public feeling on the issue, which many people who are attending the debate have articulated well.

Nobody doubts that difficult decisions must be taken when it is proposed to upgrade or reroute an electricity line, but that does not remove the public's right to have access to informed and relevant expertise that can outline the detailed scientific analysis and the rational arguments, which should properly reflect the economic costs and benefits of specific routes. Both are needed so that the impact of proposals on different communities and local environments can be accurately assessed.

At the early meetings that I attended at Crieff community hall and Kinbuck community hall, Scottish and Southern Energy gave us specific

assurances that extensive research on the proposals had been undertaken, that there had been a comprehensive consultation process involving local authorities, interest groups and the general public, and that sufficient work had been undertaken to ensure that the proposals were consistent with Government regulations and land use policy. However, in time, it became clear that the conduct of the inquiry was falling well short of public expectations and the democratic process. Members of the public were frequently left without complete information. In particular, written records of meetings were absent; there seemed to be no flexibility within the timetable for hearing important evidence; and access to a great deal of information seemed to be limited to internet access. Those difficulties—particularly the lack of written records of deliberations—were exacerbated by the meetings being held across a wide geographical area, which made it difficult for the public to keep up to date with what was going on. Moreover, several interest groups found that their dealings with Scottish and Southern Energy were fraught with confusion and red tape and liable to conflicting information. There were signs—I say this with sadness—of a lack of common courtesies.

In such an inquiry, especially an inquiry that involves so much public money, members of the public have a right to expect access to informed expertise so that they fully understand the complex technical considerations that are involved, but such access has often been available only if interest groups could hire expensive advisers and Queen's counsels. That seems to be grossly unfair when it is set against Scottish and Southern Energy's application to the Office of Gas and Electricity Markets to be reimbursed to the tune of £7 million from electricity customers throughout the UK.

In short, there seems to have been anything but a public inquiry. The procedures that have been used throughout the lengthy process have been bureaucratic, incomplete and seriously at odds with democratic principles that should, first and foremost, set out fully to engage the public in an extremely important debate about the future of energy policy in this country.

17:28

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** I thank Murdo Fraser for lodging the motion and giving members an opportunity to discuss the matter.

The route of the proposed pylon line cuts right through the centre of my constituency. Members will appreciate that the proposals have generated a massive number of objections. Communities from Achiltibuie to Fort Augustus and beyond have

united in their determination to protect their heritage and landscape and to prevent them from being destroyed and permanently blighted by the intrusion of megapylons across the Highland landscape.

I have with me a petition that was handed to me by the chairman of Highlands Before Pylons. It is a measure of people's objections to the pylon line. It includes 10,000 signatures. Some 17,000 objections may already have been made, but I have another 10,000 objections. I hope that I can get a minister or cabinet secretary to accept the petition in the next few days.

The public inquiry that is currently being conducted has been a huge disappointment so far—it has mainly demonstrated how large commercial interests that can afford to employ expensive lawyers can trample over the interests of small and vulnerable communities. That has been evident during the course of the inquiry.

However, the inquiry has provided a focus around which communities from Ullapool to Denny have been able to unite in their opposition to the Scottish and Southern Energy pylons plan. If Scottish and Southern Energy is so anxious to establish an interconnector between the Highlands and its perceived market in the south—as we have heard, the need for such an interconnector has not even been established—it should do so without damaging the Highland environment and the economy that it sustains. Many people agree that the company's current proposals are ill conceived and are designed to enhance Scottish and Southern Energy's profits, but would do nothing to protect the natural environment of an area that stretches from Ullapool to Denny through the very heart of Scotland.

The Highlands of Scotland have already made a substantial contribution to renewable energy through the many hydro schemes that, as many people will be aware, already exist in our Highland glens. With another large scheme—one of the biggest ever undertaken—currently being constructed in Glen Doe, the Highlands cannot be accused of not contributing to renewable energy sources.

We have yet to develop the unlimited resource of tide and wave power, which could connect to a subsea cable stretching from the north of Scotland to the south of Scotland. That would eliminate the need for Scottish and Southern Energy's overland pylons monstrosity. As we have heard, in some areas the megapylons would stretch into the clouds. I believe that a subsea cable is an affordable and far-sighted option that has not been fully explored.

A buried cable would also be preferable by far to pylons. Such a move would show willingness on

the part of Scottish and Southern Energy to consider the wider economic and environmental impact of its commercial interests.

17:32

**Patrick Harvie (Glasgow) (Green):** I welcome the terms in which Murdo Fraser opened the debate. It is entirely worth our while to consider the process of the inquiry without necessarily getting into the rightness or wrongness of the project.

Just as Murdo Fraser made the case that prior assumptions had been built into the inquiry, I will begin with an assumption of my own: I believe that few people object in principle to the development of onshore wind in Scotland. I understand the concerns of those who do, but I think that they are very few. On this day, on which we had a first informal meeting of MSPs to discuss the need for a cross-party group on climate change to ramp up debate on this most urgent of issues that face humanity, I believe that it is worth our while to reflect on the process of change that has led both the people and the political parties to come to such agreement. My assumption is that many objectors are reasonable people who seek not to prevent the development of renewables in Scotland, but instead to reduce the impact of such developments on people and the environment.

All members have in front of them a copy of the minister's conclusions on the legal submissions that were lodged recently. The conclusions argue that the terms of the inquiry and the various types of evidence do not need to be reconsidered. In legal terms, the ministers might well be right about that, but a question remains about whether that should be the case. Regardless of the differing views that people might have on the need for the upgrade, reasonable people who have engaged in the process and who have often spent a great deal of their own time, effort and money in doing so should be able to expect a reasonable process.

Is the public local inquiry process reasonable? I can refer only to my experience as a witness at the public local inquiry on the M74. The overwhelming sense was of the huge imbalance between the resources of objectors and the resources of developers and local authorities. It was an intimidating process; I had been fairly intimidated by being elected as an MSP a couple of months beforehand, but the process of giving evidence to the public inquiry for the first time was even worse than standing in the chamber. A degree of political bias was also built in—three days before the inquiry began, the then First Minister had made a commitment in Parliament to build the road. The terms of the inquiry were also restricted. Given all those factors, it is amazing that we won and it is rather disappointing that

ministers ignored the successful conclusions of the inquiry. I do not recall Conservative members or members of any of the other political parties that are represented in the chamber expressing a great deal of support for the objections that we raised and the motions that we lodged at the time. If we are debating the fairness of the process, rather than the merits of the project, perhaps other parties should review their positions on the M74 public local inquiry.

There will always be controversy surrounding major infrastructure projects. We will never get a process that makes everyone happy with the outcome. However, both sides—developers and objectors—should welcome the fairest, most rigorous, most comprehensive and most thorough process possible, because such a process is most likely to persuade those on the losing side, whichever that happens to be, to accept an unpalatable result.

I understand that ministers do not want to reopen the debate on planning legislation, but they have flexibility in the work that they are still doing on the regulations that result from it. Will they reconsider the idea of records of inquiries, either written or video records? The latter might be cheaper. Will they look again at the health and social factors that could be included in planning decisions, and at the idea of health impact assessments? Will they ensure that there is the broadest possible interpretation of their duties on sustainable development in relation to infrastructure projects in the national planning framework, including all social, economic and environmental factors?

17:37

**Keith Brown (Ochil) (SNP):** I congratulate Murdo Fraser on securing the debate. I am happy to support the motion and do not disagree with anything that I have heard from members so far. It is gratifying that so many members from different parties have come together to work in a common interest. I hope that that will add weight to the representations that we make today.

I commend my constituents and their fellow protesters—those who are here today and others—for their commitment during the process, which has been extraordinary in some cases. One or two of my constituents have, given the absence of a written record, sat through hours of the inquiry in order to provide reports to others on what was happening. The motion states that 17,000 people have objected to the development; we understand that the figure is now 27,000. Many have objected because they believe that in certain areas the line will be an eyesore.

I share the concerns that Murdo Fraser and others have expressed about the process. An



increasing number of cases have come to me that place in question the role of the inquiry reporters. This week there was an interesting article in *The Courier* about the issue, which would bear further scrutiny.

My constituency is not the only scenic stretch of the route—far from it—but Ochil is scenic and historic. The Wallace monument, which is no less than a symbol of Scotland's nationhood, looks out on to a landscape that will, if the proposal succeeds, be bisected by concrete and steel. Those of us who are familiar with Scottish history will recognise the significance of the battle of Sheriffmuir, where the struggle between the Jacobites and Government troops came far closer to ending the newborn Act of Union than the more celebrated uprising 30 years later. I worry that, 300 years on, we may as a country take a decision that would run huge electricity pylons right through the middle of that battlefield.

Historical and aesthetic reasons are important, not just because of the past but because Stirlingshire currently depends a great deal on the Wallace monument as a tourism resource. The atmosphere and the aesthetic bring more than 100,000 visitors a year to the Wallace monument. Scottish Natural Heritage called the Ochil hills, which the Wallace monument looks out on,

"a landscape experience that is unique in Scotland"

and

"one of the most visually sensitive areas in Scotland".

My predecessor as MSP for Ochil, George Reid, said that he was stunned by the proposals and that no other country in the world would think of despoiling an area of such national importance.

I have worked in Stirling for the past 15 years and, for most of that time, I have driven to Stirling on the A907 through Tullibody. On that road, drivers can see the vista opening up before them, with the Wallace monument sometimes shrouded in cloud. That fantastic view will be despoiled, if the proposal succeeds, with huge pylons right in front of that view. The pylons are massive—up to 65m high, which is 220ft, in old money. It is worth thinking about the fact that no building in Edinburgh is as tall as that, not even Appleton tower or Martello Court.

We do not have time to go into the health issues, but I hope that they will be taken into account by the inquiry, if it should relax its procedures. In that regard, I refer members to the recent Westminster report that talks about recommended areas either side of pylons that might generate emissions.

The eastern villages of Stirling are often forgotten about in this context but have regularly been seen as a dumping ground for pylons and

various other public utilities, to the detriment of their people. I hope that their interests will also be taken into account.

History has shown us that when decisions on what is beautiful and what is ugly are made by the state, the result is as often as not cultural vandalism or concrete monstrosities. I do not think that any of us want that to happen in relation to the areas that we are discussing. Some 27,000 people are now offering their opinions. I hope that the inquiry is flexible enough to take note of them.

17:41

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I join other members in congratulating Murdo Fraser on securing this debate. As is usual in members' business debates, there seems to be a great deal of unanimity around today's motion.

As members have said, the debate is not about the arguments for and against the route of the new line or whether all of it or part of it should be buried because of economic, tourism and health issues—that is a matter for the reporters when they make a recommendation to the minister. The motion is about the process. Many members have asked whether the process is fair and reasonable and, most important, whether it will result in a decision that is appropriate. If the process is not correct, the decision might not be correct.

I was not in the Parliament when the planning laws were changed, but whatever the planning procedures are, it is unreasonable for the sea route not to be considered as an option. I ask the minister to give an undertaking to consider the option of a sea route so that it can be appropriately considered by the reporter.

The second flaw in the process is, as others have said, that the proceedings are not being fully recorded. It is an Alice in Wonderland situation that an objector can stand up and be told that they cannot make a statement because it has been made before. Unless they have attended all the other meetings up and down the country, they have no idea whether that is the case. That is bizarre and acts against the objectors. Scottish and Southern Energy and Scottish Hydro-Electric Transmission have a massive team of lawyers who record everything themselves, but they do not appear to be prepared to make that record available to the objectors. The situation is unfair and biased and needs to be addressed for this inquiry and for future inquiries.

We will not go into the health evidence today, but I want to draw a parallel between this issue and what happened in relation to smoking in the first session. During the first session, Kenneth Gibson and I worked with Action on Smoking and Health to try to bring in a bill to limit smoking in

pubs and restaurants because the evidence of the harmful effects of passive smoking was growing. However, the evidence was not huge and it did not come from many countries. Because the evidence lacked a certain weight, the Executive wished to try other measures rather than accede to smoking legislation. During the past few years, the evidence of the harm of passive smoking has become abundantly clear and, to its credit, the Parliament has now, with a huge degree of unanimity, banned smoking in public places.

With that in mind, I say that if I had been asked six years ago about the health issue in relation to pylons, I would have said that there is no evidence of harm—but such evidence is growing day by day. I am making a point about the process rather than about what the evidence says because the evidence has to be admitted, because it is growing.

Some evidence—for example the Draper report and the report by the stakeholder advisory group on extremely low frequency electric and electromagnetic fields—has been admitted, but we do not know whether the same will apply to other research such as the bioinitiative working group report or the Lowenthal paper. The evidence is growing daily and the inquiry will not reach an appropriate result unless the appropriate evidence can be led at any point in the proceedings. It should not simply be dismissed.

SHETL's proposal to reimburse its costs with £6.5 million or £7 million of public money—which we will have to pay for, one way or another—is a total nonsense in light of what the protestors have been able to obtain, and needs to be addressed in future planning concerns.

Keith Brown referred to Stirlingshire's eastern villages. The fact that SHETL has already moved the proposed line closer to those villages and away from the new village that is to be built is another indication of commercial interest; after all, house prices in the new village would be affected by the presence of the line. If there are no health concerns, why has SHETL responded in such a way? Surely it should build on the original line. I suspect that there are other matters that still need to be brought out.

My final point is that after the loss of the mining industry in the eastern villages and given all the health inequalities and the major economic and employment problems in the area, I think that it is a total disgrace that pylons should be dumped on these people as well.

17:46

**Mary Scanlon (Highlands and Islands) (Con):** First, I respectfully remind Patrick Harvie that although it is tempting to widen the debate, it is

clearly about the way in which the public inquiry has been conducted. I also point out that none of the written objections that I have read opposes renewable energy. I also thank Murdo Fraser for securing this debate and for the points that he has raised.

Politicians hear many complaints about the decisions of public inquiries, but I have never heard so many complaints about the conduct of an inquiry as I have about what has been Scotland's longest ever public inquiry. We have to hope that lessons can be learned from the experience, to restore faith in local democracy and to encourage local people to participate in the planning process in future.

As Richard Simpson said, it is incredible that SHETL and Scottish Power are claiming £7 million from Ofgem to cover their inquiry costs. The objectors, on the other hand, have paid their council tax to be represented, they have paid their own travelling and accommodation costs, and they will now have to pay the applicants' costs through electricity charges.

Why does the directorate for planning and environmental appeals insist on taking down all the evidence in longhand and then ensuring that documents have not been accessible at the inquiry? I have to say that I was proud to hear that even in the inquiry into the Scottish Parliament building, all the documents were fed into the computer, which meant that everyone present had the same access to the same documents at the same time. As a result, there was, apparently, no confusion.

The public inquiry on the Beaulieu to Denny power line has been unable to keep to any timetable. Many people have turned up to give evidence on their appointed day, only to be told to come back the next day. Many others have incurred travelling and accommodation costs and have given up holiday entitlement to attend day after day, only to be called four or five days after their appointed day.

Why could we not have had a two-stage inquiry? The first stage could have been given over to a consideration of strategic aspects to reach a decision on the principle of the need for a connection and, as Murdo Fraser suggested, an examination of the costs of overheading and undergrounding the line.

All local authorities and community councils, the Cairngorms National Park Authority, Scottish Natural Heritage, the National Trust for Scotland, the Association for the Protection of Rural Scotland, the Ramblers Association Scotland, the Mountaineering Council of Scotland, the John Muir Trust, VisitScotland, the Royal Society for the Protection of Birds, landowners, community

groups and thousands of others all along the route have raised objections.

The public inquiry was an opportunity to get things right, but people lack confidence in it because many concerns have been dismissed and submissions have been ruled inadmissible. SSE has consistently failed to meet submission dates that the reporter has set, but still introduces new evidence. Even while witnesses are giving evidence, SSE has been allowed to change swathes of its evidence and introduce new documents. Objectors, on the other hand, have been refused permission to introduce any evidence outwith the submission dates.

Other members have covered many of the points that I wished to make. The applicants' team of advocates and advisers has been accused of filibustering when examining and re-examining witnesses. Their questioning leaves little time for objectors to squeeze in a few questions at the end.

Like the director of planning for Highland Council, I request that a summit meeting be arranged for all the participants in what will be a year-long inquiry to thrash out ways of improving the efficiency, fairness and transparency of such inquiries. We cannot turn back the clock, but we can learn from this inquiry and ensure that there is democratic and local participation in future public inquiries, which would restore people's confidence in them.

17:51

**The Minister for Enterprise, Energy and Tourism (Jim Mather):** I warmly and genuinely congratulate Murdo Fraser on bringing the debate to the chamber and putting his concerns, to which I listened intently, on the record. I also noted the uniformly supportive comments of other members and the multifaceted nature of the issues and concerns that have been raised. I have listened carefully to members' points and I recognise the wide interest in the Beaully to Denny proposal, not just in the chamber but throughout Scotland and beyond our borders.

The debate topic that is before us focuses on the conduct of the public local inquiry. Murdo Fraser and others will recognise that it is not appropriate for me to comment on the merits of the application at this point. As with any planning case or any case under the Electricity Act 1989, ministers do not comment until they have all the relevant information before them. Equally, it would be entirely inappropriate for ministers to seek to interfere with the independence of the inquiry process. Calls to stop or redirect the inquiry are at odds with the need for an objective process that listens and reaches a balanced judgment.

Nevertheless, this debate will further inform that process and further define all the factors that ministers must consider in due course. I am happy to respond to the points that have been made.

**Peter Peacock (Highlands and Islands) (Lab):**

The minister just made the same point as members made previously, which is that ministers will take account of the inquiry's results but make their own independent decision. What assurance can he give about the processes that are available to ministers to take further advice, for example, on research on having an undersea cable, to which Richard Simpson referred, or on the cost of undergrounding? Can the minister assure us that, before ministers make their final decision, they will use mechanisms that can give vent to voices that might have gone unheard at the inquiry?

**Jim Mather:** It is best to answer that by saying that ministers, too, desire to further all Scottish interests. We are reasonable people and we seek the best possible outcome.

Some of us have commented on the inquiry's timetable. It was not set arbitrarily but was devised by the reporter in the light of the statements of case that were submitted by different parties before the commencement of the inquiry. Taking into account the number of parties and witnesses, the programme was planned to run over 29 weeks but avoid the April and the summer school holidays. Those breaks were provided primarily to recognise objectors' commitments.

The timetable that was set at the outset has been maintained. That is important, as it has ensured that one part of the inquiry has not overrun at the expense of another. Equally, some members have argued that more time might have been allocated. I suggest that, as in all inquiries, our aim must be to have the tightest timescale that allows adequate and fair examination. Indeed, I believe that that is what we must have. We are already looking at an inquiry that will run from February to December. After the inquiry finishes, a report must be written that takes into account written submissions and oral evidence. That will be a hugely complex task and ministers do not expect to receive the report until late in 2008. The report will then be considered properly before a determination is reached. Even in the current timetable, a determination is unlikely before early 2009.

Members commented on the reporter's refusal to admit late additional documents in evidence. That has happened only when the reporter was given no cogent reason why evidence was provided after the inquiry commenced. I hope that members will acknowledge that acceptance of such late evidence could make the inquiry open-ended and would require parties to the inquiry to deal with a moving target. That is not reasonable and would prolong the inquiry.

**Mary Scanlon:** Will the minister give way?

**Jim Mather:** I will do so when I have finished making my point.

It is not just objectors who have been treated in that way; the applicants, too, have been turned away when they attempted to introduce late or changed documentation. However, many additional documents have been admitted where good reason for late submission has been shown.

**Mary Scanlon:** The minister has almost answered my question, which is about objectors' allegations that late submissions from them have been refused while many late submissions from the applicants have been accepted. Does he accept that that has happened?

**Jim Mather:** I accept that a balance has been struck and that many additional documents have been admitted, where good reasons have been shown.

Legal submissions have also been made to the inquiry on the adequacy of information before the inquiry. Those submissions were fully considered by ministers and in respect of each it was decided that the inquiry should proceed as scheduled. Members will understand that the shortness of time for today's debate means that I cannot fully set out the conclusions that led to those decisions. However, the conclusions are set out in letters of 29 June, which are available for everyone to read on the well-used inquiry website. The key point is that all parties to the inquiry must be treated in exactly the same fair manner. As a person who wants to see Scotland befriend continuous improvement, I am keen that all parties should listen and learn.

The inquiry has been timetabled and structured to allow the examination of the statements of case that have been submitted. When the reporter is producing his report, he will consider the totality of the written submissions and oral examinations. That will provide the balanced democratic process that members seek.

I will not comment on the merits of the case, but I will comment briefly on the policy context. The Government wants Scotland to have secure supplies of energy, which will take advantage of our huge potential in renewables, help us to meet our climate change objectives and allow us to export energy. However, we have made it clear that we will not pursue that energy agenda at any price. We accept that we must take into account, for example, other environmental considerations. That is what we do with every application for generation or transmission of electricity that comes before us.

Public local inquiries can play an important part in the examination of evidence. I have tried to

show members that the objective is to run the Beaulieu to Denny inquiry fairly and effectively. I think that members' comments will strengthen that objective, which is fully in keeping with the democratic principles that we all share. I urge members to show their support for the process, so that the application and submissions can be properly examined, the evidence heard and the report produced in the planned timeframe.

*Meeting closed at 17:58.*

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